

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

**FINAL FINDING AND DECISION**

of a  
Land Offering in the Matanuska-Susitna Borough  
**Hobby Horse Subdivision – ADL 233000**  
*AS 38.05.035(e), AS 38.05.045*

and its  
**RELATED ACTION(S):**  
**None**

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) dated October 5, 2021. The PD (attached) has had the required public review.

**I. Recommended Action(s)**

The State of Alaska, Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) recommends offering for sale State-owned land for private ownership within the Hobby Horse Subdivision project area (ADL 233000), as described in the PD. Surveyed parcels will be offered for future sale by a method under *AS 38.05.045 Generally*.

For the purposes of providing land for settlement in the Hobby Horse project area, LCS may develop a subdivision of no more than two parcels for sale, no smaller than seven acres. This is a reduction from four parcels as stated in the PD. Subdivision design will include a minimum of one additional parcel to be retained in State ownership. This project area is located within the Matanuska-Susitna Borough and therefore survey, platting, and access to and within the project area will be subject to the relevant subdivision standards of the borough. The project may be subdivided and offered in multiple stages.

There are no related actions with this proposal.

**II. Authority**

DNR has the authority under *AS 38.05.045 Generally* to sell State-owned land if, on preparation and issuance of a written finding, it is determined to be in the best interest of the State, as required by *AS 38.05.035(e) Powers and Duties of the Director*. Article VIII, Section 1, of the Constitution of the State of Alaska provides: "It is the policy of the State to encourage the settlement of its land and development of its resources by making them available for maximum use consistent with the public interest." In addition, if it is deemed appropriate, DNR has the authority to develop and offer parcels larger than 5 acres under the allowances listed in *AS 38.04.020 (h) Land Disposal Bank*.

**III. Public Participation and Input**

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

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- Posted under State of Alaska Online Public Notice from 10/5/2021 to 11/9/2021.
- Posted on DNR Land Sales website from 10/5/2021 to 11/9/2021.
- Notices mailed to the Matanuska-Susitna Borough per AS 38.05.945(c)(1).
- Mailed to postmasters in Houston, Talkeetna, Trapper Creek, and Willow with a request to post for 30 days, per AS 38.05.945(c)(4).
- Mailed to the library in Big Lake, Talkeetna, Trapper Creek, Wasilla, and Willow with a request to post for 30 days.
- Mailed to the Cook Inlet Region, Inc. Regional Corporation per AS 38.05.945(c)(2)-(3).
- Mailed to landowners and interested parties in the vicinity of the offering, University of Alaska, Chamber of Commerce and Fire Department from Talkeetna, Greater Talkeetna Road Service Area No 29, Matanuska Electric Association, Matanuska Telephone Association, Talkeetna and Susitna Community Councils, Sunshine Community Health Center, and thirty neighbors within a half-mile radius of the project area.
- Sent notification to area state legislators and to multiple state agencies.
- Notified parties via the DNR Land Sales subscribers lists by email.

The public notice stated that written comments were to be received by 5:00PM, November 9, 2021, in order to ensure consideration and eligibility to appeal. For more information, refer to the PD.

Should this project move forward and the project area be subdivided, final subdivision design and survey will be completed by an Alaska licensed surveyor. The surveyor will submit a platting application including a preliminary plat to the local platting authority prior to survey. This process will be subject to Matanuska-Susitna Borough's ordinances and codes. During the process the public will have opportunity at the local level to provide additional comment and feedback prior to final establishment of lot corners and monuments.

Subdivision design will be submitted to the Matanuska-Susitna Borough's Platting Authority for review in accordance with Title 43 *Subdivisions* of their ordinance.

Title 43.10.060(A) Platting Authority Procedure: "The platting board shall act on an application for preliminary plat ... only after holding a public hearing on the application."

Title 43.10.065 Notice: Public Hearing: This section details the parameters required for public hearing notification by the MSB.

## IV. Summary of Comments

DNR DMLW LCS received comments from the State of Alaska, Department of Fish and Game (ADF&G), the State of Alaska, Department of Natural Resources, Division of Forestry (DOF), and five private individuals. All comments received during the public comment period are summarized below and grouped by topic.

Department of Fish and Game (ADF&G) Comment: ADF&G concurred that the wetlands in the southeast corner of the project area do not meet the definition of public waters, they suggested that there was a high likelihood they supported anadromous fishes. ADF&G supported the retention of wetland areas in state ownership as well as the application of the 150' building setback as described in the PD. ADF&G also suggested the retention of the northeast corner of the project area might be warranted.

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DNR DMLW LCS Response: LCS thanks ADF&G for their input and will continue to consult with ADF&G as necessary during the subdivision design process to protect Answer Creek and associated wetlands and habitat. Subdivision design will retain at a minimum: the State-owned lands within 150-feet of each side of Answer Creek and the wetland in the southeast corner of the project area, The area located north of Answer Creek, and the northeast corner of the project area, will also be retained in State-ownership.

Department of Natural Resources, Division of Forestry (DOF) Comment: The DOF had no additional comments and thanked LCS for incorporating their previous comments.

DNR DMLW LCS Response: LCS thanks DOF for their input and continued support of the project.

Comment in favor of Land Sale: One comment received was in favor of the Land Sale project and requested information on DNR's land sale process. The commenter would like to purchase the property, improve the road, remove the vehicles and trash, and prevent future use of the land as a dump site.

DNR DMLW LCS Response: Thank you for your comments, LCS appreciates your interest in purchasing the Hobby Horse parcel and has sent additional information regarding the land sale process.

### Comments regarding investigation and clean-up of possible contaminants.

Comments regarding investigation and clean-up of possible contaminants: Four comments received addressed concerns with regards to the possibility of there being contaminants and hazardous materials (topics include trash, fuel tanks, chemicals, magnetic anomalies, and human waste) remaining on the property and the need for additional investigation and clean-up before any land is offered for sale. Comments expressed concern that DNR is shifting risk of contaminants to the buyer. One comment suggested that land which is not cleaned-up should be retained in public ownership, cordoned off, and managed by DNR.

DNR DMLW LCS Response: Thank you for your comments. LCS has no statutory or regulatory obligation to conduct further investigation or cleanup and elects to sell the land as is. Any contaminants that may be located on the property, are subject to joint and several liability under state and federal law, for all owners in the chain of title from the time of contamination on. LCS believes the clean-up efforts in 2016 and 2017 were sufficient to prepare the parcel for conveyance. Additionally, the land has been inspected for hazardous materials to the best of DMLW's internal abilities, and sales brochures will alert potential purchasers of the preexisting conditions and the possibility of unknown amounts and types of hazardous materials and contamination. Interested parties are encouraged to inspect the property and to familiarize themselves with the condition and quality of the land prior to bid and application submittal.

Comments regarding lead contamination: Two comments requested that DNR investigate the potential lead contamination on the project area and clean it up prior to sale.

DNR DMLW LCS Response: Thank you for your comment, sales brochures will alert potential purchasers of the preexisting conditions and the possibility of unknown amounts

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and types of hazardous materials and contamination. Interested parties are encouraged to inspect the property and to familiarize themselves with the condition and quality of the land prior to bid and application submittal. LCS has no statutory or regulatory obligation to conduct further investigation or cleanup and elects to sell the land as is. See response to comments regarding other contaminants.

Comments regarding Phase II & III Environmental Assessments: Two comments requested DNR conduct Phase II and Phase III Environmental Assessments prior to sale. One commenter expressed concern that DNR is downplaying the amount of potential environmental risk and trying to shift the risk to the buyer.

DNR DMLW LCS Response: Thank you for your comments. DNR's investigations revealed that the site has the potential to contain contaminants or hazardous materials, but further investigation would need to be done to determine the presence or absence of contamination. However, DNR is not obligated by statute or regulation to complete those further investigations and chooses to sell the parcel as is. Furthermore, there are many known contaminated sites on state land held in the public trust. Some of these sites remain uncharacterized and unremediated due to the lack of dedicated funding, therefore further investigation and potential remediation of this site is not the highest and best use of state resources. DNR will continue to disclose all known potential liabilities on this property, and is not forcing the transfer of this land. Land within this project area will be sold with full disclosure to willing buyers who are able to decide whether to take on the potential risk.

Comments regarding DEC: Two comments requested that DNR reach out to the Department of Environmental Conservation (DEC) and seek their input and assistance. The commenters stated that DNR should not simply disclose the information to potential buyers and pass liability onto them.

DNR DMLW LCS Response: Thank you for your comment. DEC did not comment during Agency/Division review or during the Public Notice period. The DEC contaminated sites database does not have any open or closed projects in this area to report on. Since DNR is under no obligation to conduct further investigation or notice, DEC will not be further consulted. If any hazardous materials or environmental concerns are identified during project development LCS will notify DEC.

Individual Comment regarding Outhouse: One comment suggested that DNR should deal with any human waste associated with the outhouse and reclaim the area.

DNR DMLW LCS Response: Thank you for your comment. Outhouses are common in Alaska and do not present a hazardous condition. A subsequent owner could follow DEC's Pit Privy Design and Operation guidelines and reuse the outhouse area.

Individual Comment regarding electrical box: One comment suggested DNR should investigate the electrical junction box and phone box and take appropriate action.

DNR DMLW LCS Response: Thank you for your comment. LCS believes a subsequent owner may want electrical and telephone services. LCS intends to sell the parcel as is.

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Individual Comment regarding material site: One comment suggested the trespass material site be reclaimed.

DNR DMLW LCS Response: Thank you for your comment. The material site is vegetated with trees and shrubs and is stable. There is no need to reclaim the area if left undisturbed.

Individual Comment regarding retaining contaminated lands: One comment suggested that land which is not cleaned-up should be retained in public ownership, cordoned off, and managed by DNR.

DNR DMLW LCS Response: Thank you for your comment. DNR is not obligated by statute or regulation to complete further investigations or cleanup and chooses to sell the parcel as is. Any contaminants that may be located on the property, are subject to joint and several liability under state and federal law, for all owners in the chain of title from the time of contamination on. LCS believes the clean-up efforts in 2016 and 2017 were sufficient to prepare the parcel for conveyance. Sales brochures will alert potential purchasers of the preexisting conditions and the possibility of unknown amounts and types of hazardous materials and contamination. Interested parties are encouraged to inspect the property and to familiarize themselves with the condition and quality of the land prior to bid and application submittal.

Individual Comment regarding UA lands: One comment suggested that DNR could set a precedent of properly protecting important wetlands for the University of Alaska by cleaning the project area up and placing protective measures on it prior to sale.

DNR DMLW LCS Response: Thank you for your comment. LCS does not have any authority regarding the management of UA lands.

### Comments regarding protecting habitat and retaining lands.

Comments regarding protecting habitat and retaining lands: Three comments were received stating that DNR should retain the east 350 feet of the project area, along with land adjacent to Answer Creek in public ownership to protect habitat. One of the commenters supported the 150-foot setback around the wetlands, and encouraged retaining additional lands.

DNR DMLW LCS Response: Thank you for your comments. Subdivision design will incorporate the retention in State ownership for the wetlands in the southeast, the piece of land in the northeast corner, and the lands within a minimum of 150-feet of each side of Answer Creek. This will allow DNR to complete a subdivision design which protects the wetlands and anadromous stream and also allows for a subdivision design which maximizes utility of the land to be conveyed and return to the State. The retained lands will be open to public use subject to generally allowed uses.

Comments regarding the northeast corner of the Project Area: Two comments requested that the lands in the northeast corner of the project area be retained in public ownership.

DNR DMLW LCS Response: Thank you for your comment, subdivision design will incorporate the retention of the northeast corner of the project area.

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Comment regarding retained lands: Two comments requested that the wetlands as well as land underlying buffers, setbacks and adjacent to Answer Creek be retained in public ownership to adequately protect the salmon and wildlife habitat. Comments noted that DNR should follow ADF&G recommendations.

DNR DMLW LCS Response: Thank you for your comment. LCS has coordinated with ADF&G in the development of this project and will continue to work with ADF&G as necessary during subdivision design to establish appropriate setbacks, buffers, easements and retained lands. Subdivision design will retain at a minimum: the State-lands within 150-feet of each side of Answer Creek and the wetland in the southeast corner of the project area. The area located north of Answer Creek, and the northeast corner of the project area, will also be retained in State-ownership.

Individual Comment regarding closing lands to trapping: One comment requested that retained lands, setbacks and easements be closed to trapping.

DNR DMLW LCS Response: Thank you for your comment. LCS does not have the authority to close state-owned land to Generally Allowed Uses on State land (11 AAC 96.020).

Individual Comment regarding development: One comment stated subdivision can be done responsibly if future landowners are not allowed to develop property up to the water, plant lawns, or fill wetlands.

DNR DMLW LCS Response: Thank you for your comment. Subdivision design will retain at a minimum: the lands within 150-feet of each side of Answer Creek and the wetland in the southeast corner of the project area. These restrictions/reservations will prevent development up to the stream or within the retained wetland areas.

Individual Comment regarding wetlands: One comment stated that, "Great care must be given to subdividing so that the Answer Creek wetlands are kept intact". They felt that the wetlands were important riparian and salmon habitat.

DNR DMLW LCS Response: Thank you for your comment. LCS has coordinated with ADF&G during subdivision design to prevent negative impacts to the Answer Creek wetlands. Subdivision design will incorporate the retention of lands along Answer Creek and the wetlands in the southeast corner of the project area.

### Comments regarding Determination and Public Notice Process.

Comments regarding Determination SC-09-02-D14: Two commenters took exception with the process used to classify the project area as settlement land and requested that the determination be amended or repealed.

DNR DMLW LCS Response: Thank you for your comment. The SMAP provides for the determination of a missed area in the Chapter 4 section titled, *Applicability of Plan Designations/Classifications to State Lands not Identified in the Plan Text or Plan Maps*. These procedures were included in this and previous plans to explain the designations and classifications for any missed lands. The recognition of a missed land's designation or classification does not require a formal plan amendment and land classification process, as it constitutes a minor change to the plan under 11 AAC 55.030 (f)(2):

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A minor change to a land use plan is not considered a [plan] revision under AS 38.04.065. A “minor change” is a change that does not modify or add to the plan’s basic intent, and that serves only to clarify the plan, make it consistent, facilitate its implementation, or make technical corrections.

When a determination is drafted for a particular piece of land, DNR is clarifying that a particular provision in Chapter 4 of the plan is being applied to a particular piece of land. The basic management intent of the plan remains unchanged and no policies, prohibited uses or guidelines are altered. In this case specifically, the state land was incorrectly labeled as University Land on the plan maps and thus inadvertently omitted from the resource allocation table in Chapter 3. The specific provision in the plan applied from the Chapter 4 section was bullet two which states:

Parcels near other State Land. If the parcel adjoins or is surrounded by other state land, the designation of that area(s) applies. It is to be managed according to the management intent and guidelines applicable to the adjacent lands. Such lands can be considered appropriate for disposal if they are designated Settlement unless it is appropriate for as a site(s) for schools, material sites, roads, parks, or other similar public use. They may also be conveyed to a municipality even if it is suitable for these public uses as long as the proposed uses are for comparable municipal (public) use.

The determination provides the mechanism to correct the errors in the resource allocation table and plan map by adding the subject lands to unit S-25. The basic intent for how omitted lands will be handled has already been provided for in Chapter 4 and the specific management intent/guidelines for the unit S-25 do not change. Minor changes do not require public notice.

The Fish and Wildlife Habitat provisions of chapter 2 of the SMAP would still apply regardless of the specific unit management intent.

Comments regarding OHA: Two comments requested that DNR reach out to OHA and ask for a cultural resource survey.

DNR DMLW LCS Response: Thank you for your comment, OHA was included in the Agency/Division review and Public Notice distribution. When the PD was written, review of the OHA database indicated that there were no known AHRS sites recorded in or within approximately one mile of the project area. If any cultural resources are inadvertently discovered during project development, DNR will notify OHA of the discovery so that it can be evaluated to be preserved in the public interest as stipulated under Section 41.35.070(d) of the 1971 Alaska Historic Preservation Act.

Individual Comment on Preliminary Decision: One commenter stated that the PD was vague on lot size and future subdividing. They were alarmed that there was no mention of salmon, habitat, wetlands or protecting anything.

DNR DMLW LCS Response: Thank you for your comment. The PD was written in such a way as to give flexibility when complying with MSB requirements. Per the PD and as modified herein, subdivision of the project area could be designed in a number of ways; however, the resultant subdivision may contain no more than two parcels for sale (plus

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additional retained lands), and none of the parcels for sale may be smaller than seven acres.

Individual Comment regarding public comment: One comment requested another public comment period before beginning the subdivision process with the borough.

DNR DMLW LCS Response: Thank you for your comment. As per AS 38.05.945(b)(2)(A) Notice, posting of notice is required on the Alaska Online Public System for at least 30 consecutive days. Public notice for this project was posted online and distributed to the post offices and public library for posting from October 5, 2021, through November 9, 2021. This provided 35 days to the public. LCS believes the comment period was adequate for a project of this size. The MSB subdivision process will give individuals another chance to submit comment on the project.

Individual Comment regarding clarity: One comment stated there was a need for a clearer picture of what DNR proposes to do.

DNR DMLW LCS Response: Thank you for your comment. The PD was written to allow for flexibility when complying with MSB platting standards. Based upon comment and internal review LCS intends to survey and offer for sale no more than two lots for sale and retain in State ownership the lands adjacent to Answer Creek, the northeast corner, and the wetlands in the southeast corner of the project area.

### Comments regarding survey and public roads.

Comments regarding survey and monumentation: Two comments were received requesting the survey, monumentation, and marking in the field of the north boundary of the project area. They also requested the meander lines of Answer Creek be surveyed and monumented.

DNR DMLW LCS Response: Thank you for your comments. The project area will be surveyed in accordance with MSB standards. Subdivision design may not require meandering of Answer Creek due to the large area of retained lands.

Individual Comment regarding pioneer standard road: One comment suggested LCS should disclose the fact that Hobby Horse Lane is a Pioneer Standard Road and as such receives no maintenance from the borough, upkeep and maintenance is the responsibility of the landowner.

DNR DMLW LCS Response: Thank you for your comment. The access and status of the road will be disclosed in the sales brochure and online website.

Individual Comment regarding the number of lots: A commenter felt that four lots were too many and that two 7-acre lots with restrictions prohibiting further subdivision would be consistent with surrounding land use.

DNR DMLW LCS Response: Thank you for your comment. LCS does not intend to place covenants or restrictions prohibiting further subdivision on the land. Any further subdivision of parcels will be subject to MSB platting requirements. The FFD has been modified to change the number of lots to no more than two, with the retention of Answer Creek and wetlands in State ownership.



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Individual Comment regarding trespass: One commenter stated that they did not give permission for anyone to trespass on their property to access Answer Creek or otherwise.

DNR DMLW LCS Response: Thank you for your comment. LCS agrees that you have the right to post “No Trespassing” signs on your land.

Individual Comment regarding legal description: One comment received suggested the use of the term Lot 4 should really be Government Lot 4.

DNR DMLW LCS Response: Lot 4 was conveyed to the State from the Federal Government as Lot 4 and not Government Lot 4 as per U.S. Patent 1213622.

## **V. Traditional Use Findings**

In accordance with *AS 38.05.830 Land Disposal in the Unorganized Borough*, a Traditional Use Finding is required for project areas within the Unorganized Borough. This project area is within an organized borough; therefore, no Traditional Use Finding is required.

## **VI. Modifications to Decision and/or Additional Information**

Pursuant to public comment, field inspection, and coordination with ADF&G, the recommended action has been modified from the original proposed action described in the PD to reduce the number of parcels proposed for sale from no more than four parcels, no smaller than seven acres, to no more than two parcels, no smaller than seven acres. In addition, subdivision design will retain at a minimum: the State-lands within 150-feet of each side of Answer Creek and the wetland in the southeast corner of the project area. The area located north of Answer Creek, and the northeast corner of the project area, will also be retained in State-ownership. The retained lands will be subject to generally allowed uses. This offering includes the possibility of selling the project area as a single parcel or a subdivision of no more than two parcels, with additional parcels to be retained in State ownership.

Recommendation and Approval of the Final Finding and Decision follow.

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**VII. Final Finding and Decision**

The Land Conveyance Section recommends proceeding with the action as described in the Preliminary Decision and amended herein. This action is undertaken under relevant authorities. Offering these parcels for sale will help meet the State’s goal to provide land for settlement for sale to the public and raise revenue for the State.

The findings presented above have been reviewed and considered. Public Notice has been accomplished in accordance with *AS 38.05.945 Notice* and comments received were considered. The project file has been found to be complete and the requirements of all applicable statutes have been satisfied. The action is consistent with constitutional and statutory intent for State-owned land and this action is undertaken under relevant authorities.

Signature on File

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

January 31, 2023

\_\_\_\_\_  
Date

Under the authority of the applicable statutes, it is hereby found to be in the best interest of the State of Alaska to proceed with the recommended action(s) as described and referenced herein.

Signature on File

\_\_\_\_\_  
Approved by: Christianna D Colles  
Director  
Division of Mining, Land and Water  
Department of Natural Resources  
State of Alaska

March 3, 2023

\_\_\_\_\_  
Date

## **Appeal Provision**

An eligible person affected by this decision, and who provided timely written comment or public hearing testimony to the department, may appeal the decision to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any appeal must be received within twenty (20) calendar days after issuance of this decision under 11 AAC 02.040. An eligible person must first appeal a decision to the Commissioner before seeking relief in superior court. The Alaska Court System establishes its own rules for timely appealing final administrative orders and decisions of the department. Appeals may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918; or sent by electronic mail to [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov). Appeals must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$200 under the provisions of 11 AAC 05.160 (a)-(b). A copy of 11 AAC 02 is available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.