

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

**FINAL FINDING AND DECISION**

of a  
Land Offering in the Kenai Peninsula Borough  
**Cohoe, AK Lots – ADL 234014 and ADL 234015**  
*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 February 14, 2023. The PD (attached) 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 Cohoe, AK project area (ADL 234014 and ADL 234015), as described in the PD. Two surveyed parcels will be offered for future sale by a method under *AS 38.05.045 Generally*.

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:

- Posted under State of Alaska Online Public Notice from February 15 to March 21, 2023.
- Posted on DNR Land Sales website from February 15 to March 21, 2023.
- Notices mailed to the Kenai Peninsula Borough per *AS 38.05.945(c)(1)*.
- Mailed to postmasters in Soldotna, Kenai, Kasilof, and Clam Gulch with a request to post for 30 days, per *AS 38.05.945(c)(4)*.

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- Mailed to the library in Kenai, Ninilchik, Soldotna, and Kasilof with a request to post for 30 days.
- Mailed to the Cook Inlet regional corporation per *AS 38.05.945(c)(2)-(3)*.
- Mailed to the current 22 landowners in the Cohoe Alaska Subdivision, the Ninilchik, Salamatof, and Kenai Native Associations, the villages of Ninilchik and Salamatof, and the Kenaitze Indian Tribe.
- Sent notification to area state legislators and to multiple state agencies.

The public notice stated that written comments were to be received by 5:00PM, March 21, 2023 in order to ensure consideration and eligibility to appeal. For more information, refer to the PD.

### IV. Summary of Comments

DNR DMLW LCS received comments from the Kenai Peninsula Borough. All comments received during the public comment period are summarized below.

Kenai Peninsula Borough (KPB) Comment: KPB requested the consideration of a 60-foot public access easement along the northern border of ADL 234014 in order to access borough property to the east of the parcel. After further consideration KPB determined the 50-foot section line easement to be sufficient and will rely on that for access to borough property.

DNR DMLW LCS Response: LCS appreciates the comment and will be sure potential buyers are aware of the 50-foot section line easement within ADL 234014.

### V. Traditional Use Findings

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

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

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

An updated field inspection was performed on June 27, 2023 to assess the interior of the existing structures on ADL 234014 and determine their suitability as dwellings. LCS found all structures have suffered extensive water damage. Within the main cabin there are mattresses, a wood stove, and miscellaneous household items. The storage sheds all contain mostly household items, such as clothing, furniture, and tools. The oil drums identified in the previous inspection are all empty and there is no evidence of ground contamination. It appears they were frozen to the ground during the previous inspection and that is why they were immovable and felt heavy.

DNR determines that the Cohoe, AK lots contain improvements that have become fixtures of the land:

- ADL 234014 contains a single-family home, wastewater system, and two storage sheds in the southwest corner of the parcel.

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According to the contract agreement, at the time of termination the contract will be treated as a lease and the outcome of all personal property, buildings, and fixtures left on the property will be determined by AS 38.05.090. The value of the fixtures will be evaluated by an appraisal arranged by DNR.

Recommendation and Approval of the Final Finding and Decision follow.

**Final Finding and Decision**

Cohoe, AK Lots – ADL 234014 and ADL 234015

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**VII. Final Finding and Decision**

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

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

(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

11/7/23

\_\_\_\_\_  
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

11/8/23

\_\_\_\_\_  
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>.

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

**PRELIMINARY DECISION**  
**Cohoe, Ak Lots**  
**ADL 234014 and ADL 234015**

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

**RELATED ACTION(S):**  
**None Proposed**

**PUBLIC COMMENT PERIOD ENDS 5:00PM, TUESDAY, MARCH 21, 2023**

**I. Proposed Action(s)**

*Preliminary Decision: Cohoe, Ak Lots - ADL 234014, ADL 234015*  
*Attachment A: Vicinity Map*  
*Attachment B: Public Notice*

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 two parcels within the Cohoe Alaska Subdivision project area for the purpose of providing land for settlement.

If this proposed primary action is approved, the actual area 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.

Proposed Related Action(s): No related actions proposed.

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.

See **Section XVII. 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 FFD will be issued.

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### **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*.

### **IV. Administrative Record**

The project files, Cohoe, Ak Lots - ADL 234014 and ADL 234015, constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Kenai Peninsula Area Plan for State Lands (KAP, adopted 2000) and associated land classification files;
- *Alaska Interagency Wildland Fire Management Plan 2021*;
- *Alaska Department of Fish and Game Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes*;
- *USDA, Natural Resource Conservation Service Custom Soil Report for this project, dated 2022*; and
- DNR case files: electric distribution line easement (ADL 42392), school section selection (SCH 10), mineral orders (MO-1041 and MO-1060), 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 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.

### **VI. Location**

The project area is located within DNR's Southcentral Region, approximately 5 miles northwest of Kasilof and 14 miles south of Soldotna, within Section 16, Township 3 North, Range 12 West, Seward Meridian, within the Kenai Peninsula Borough (KPB). The project area consists of 2 surveyed parcels approximately 3.19 and 5.72 acres identified for disposal by this proposed action.

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*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 regional corporation. The villages of Ninilchik, Salamatof, and Kenaitze Indian Tribe are within 25 miles of this proposed action and notice will be sent to the village of Salamatoff, Ninilchik village, Kenaitze Indian Tribe, Kenai Native Association, Ninilchik Native Association, and Salamatof Native Association.

### **VII. Property Description**

Lot 1 in Block 2 of Alaska State Land Survey No. EPF28-94, Cohoe Alaska Subdivision, containing 5.792 acres, more or less, according to the survey plat filed in the Kenai Recording District on September 25, 1963, as Plat K-1348, as depicted on Attachment A: Vicinity Map.

Lot 10 in Block 1 of Alaska State Land Survey No. EPF28-94, Cohoe Alaska Subdivision. Containing 3.191 acres, more or less, according to the survey plat filed in the Kenai Recording District on September 25, 1963, as Plat K-1348, as depicted on Attachment A: Vicinity Map.

### **VIII. Title**

Title Report No. 22520, current as of October 3<sup>rd</sup>, 2022, indicates the State of Alaska holds fee title to the land and mineral estate within ADL 234014 under Patent 1220719, dated June 20, 1961. The applicable State case file is SCH10. The parcel is subject to the reservations, easements and exceptions contained in the federal patent.

Title Report No. 22519, current as of August 11<sup>th</sup>, 2022, indicates the State of Alaska holds fee title to the land and mineral estate within ADL 234015 under Patent 1220719, dated June 20, 1961. The applicable State case file is SCH10. The parcel is subject to the reservations, easements and exceptions contained in the federal patent.

#### *State Reservations of Title:*

*Retention of and Access to Mineral Estate:* In accordance with *Section 6 (i) of the Alaska Statehood Act* and *AS 38.05.125 Reservation [of Rights to Alaska]*, the State retains ownership of the mineral estate that may be in or upon the land that it sells. This retention is for all minerals, including both locatable minerals (such as gold, copper and silver, etc.), and leasable minerals (such as oil, gas, coal, etc.).

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



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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 **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 field inspection conducted on October 26, 2022. 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:* ADL 234014 maintains a constant elevation of about 74 feet above sea level. ADL 234015 also maintains a constant elevation of 74 feet until the bluff where it slopes towards Cook Inlet at approximately 35 degrees to the shoreline along Cook Inlet. There is about 350 feet of shoreline along Cook Inlet.

*View:* Both parcels may have views of Cook Inlet, Kalgin Island, and Redoubt Volcano.

*Vegetation:* Lot 10, Block 1 is almost entirely vegetated by white spruce and some trembling aspen, until the bottom of the bluff after which it becomes unvegetated. Lot 1 of Block 2 is also mostly vegetated by black spruce. The southwest corner has been cleared and is herbaceous woodland with some spruce regrowth and an unvegetated portions where a gravel driveway has been installed.

*Soils:* Soils within the project area generally consist of well-drained silt loams. Both lots are comprised of nonirrigated capability class 3 soils indicating that they could be used for some gardening or agricultural practices. Depth to bedrock is approximately 6.5 feet. The properties of these soils indicate they would make a poor gravel source.

*Wetlands:* No wetlands have been identified within the project area.

*Geologic Hazards:* According to information provided by DNR, Division of Geological and Geophysical Surveys, the project area is within a region of Alaska that most commonly has isolated permafrost. There are no known active faults nearby, but the seismic hazard potential of the area is still moderately high. It is advised to follow standard best building practices to account for seismic activity. There is also the potential for ash fall from Cook Inlet and Alaska Peninsula volcanic activity.

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*Fire Information:* Pursuant to observations from the on-ground field inspection and information from the Alaska Wildland Fire Information Map series, fire risk in the area is likely low. There is no reported history of fires within the vicinity. The project area is within the Central Emergency Services Area.

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 DNR 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.” It also states that there is no guarantee of protection from wildfire in any management option. It is the responsibility of landowners to mitigate and minimize risk to their property before it becomes threatened by a wildfire.

*Flood Hazard:* The project area is within FEMA Flood Insurance Rate Map Community Panel 0200122390A. There is no flood information available for the project area. There is potential for seasonal flooding and erosion of parcels adjacent to water bodies, especially in low-lying areas.

*Water Resources:* All surface and subsurface waters on all lands in Alaska are a public resource, subject to appropriation in accordance with the Alaska Water Use Act (AS 46.15). There are subsurface water rights in the vicinity about 1200 feet south of ADL 234014 and 1200 feet north of ADL 234015. Information from well logs indicate that well depths in the vicinity typically range from 160 to 220 feet. Potential water sources in the area include drilled wells. 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 (HEA).

*Waste Disposal:* The Central Peninsula Landfill is located at mile 98.5 of the Sterling Highway. There are also transfer facilities located in Kasilof, Kenai, Nikiski, and Sterling. All on-site waste water disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation.

## **X. Background:**

The Cohoe Alaska Subdivision was surveyed and platted in 1963. Most of the lots were sent to auction and are in private ownership. Parcels on the west side of Cohoe Loop Road are between 3 and 4 acres in size while parcels on the east side of the road are slightly larger at just above 5 acres. Lot 3 of Block 1 and lots 4 and 5 of block 2 are all Cook Inlet Regional Corporation land, it appears these lots are currently undeveloped. Tract A of block 2 is municipal entitlement land that also appears to be undeveloped. Much of the land to the east and north of the subdivision is undeveloped municipal entitlement land. Cohoe Loop Road provides access to the parcels. Parcels along the coast can also be accessed via the public

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waters of Cook Inlet, however due to the size of the bluff this access route is impractical. During subdivision platting, the parcels along Cook Inlet were not subject to access easements along or setbacks from the public waterbody.

During sale DNR does not intend to create a building setback or public access easement in accordance with *AS 38.05.127 Access To Navigable or Public Water*, for ADL 234015, Lot 10, Block 1. LCS believes that the bluff located 200 feet from Mean High Water (MHW) and 70 feet above the Inlet creates a self-enforcing building setback making it unmeaningful to create a 100-foot setback. Adequate access to the beach from Cohoe Loop Road exists both 2.5 miles north and 7 miles south of the parcel so no easement to the beach is necessary. An easement along the parcel would be isolated in nature as all surrounding parcels do not have one, meaning that the creation of one would not provide any reasonable or meaningful benefit. The addition of an easement would add unnecessary costs to the State and would decrease the value of the parcel. It is within the public interest not to reserve unnecessary easements due to increased administrative cost, reduction in land value, and restriction of use for that portion that would provide access to the MHW.

ADL 234014 is former lease ADL 23761, Lot 1 Block 2 of the Cohoe Alaska Subdivision. The parcel was offered for lease at auction in 1963, and a lease was issued in 1964. The lease was transferred multiple times through 2009. In 2012 the lessee applied for a preference right purchase and entered into a land sale contract for the parcel. The purchase contract was terminated for non-payment in 2019.

During a field inspection in 2010 several structures, trash, and debris were found, but no indication that the land was inhabited. The October 2022 site inspection confirmed the existence of multiple structures including a house, a mobile home, two abandoned vehicles and some scattered waste.

The mobile home is dilapidated all windows and doors are open and or broken and the inside is completely covered in debris. Behind that is the house, which looks to be about 2 stories. All the windows are intact, the front door was closed and locked and the OSB sheathing is exposed. The home appeared to have a wastewater and/or water well, but it was unclear if electrical services were hooked up. There are 2 shed like buildings around the house, both appearing to be cold storage. One has no windows and no door, while the other has both. There is also an old greenhouse that does not have any siding or roof and is caving in. There is one additional structure in the woods behind the house that looks to be a small chicken coop.

DMLW is currently evaluating options for removal of some of the derelict structures and/or abandoned vehicles. Improvements remaining on the parcel will be handled in accordance with *AS 38.05.090 Removal or Reversion of Improvements Upon Termination of Leases*.

ADL 234015 is former lease ADL 21945, Lot 10 Block 1 of the Cohoe Alaska Subdivision. The parcel was originally leased at auction in 1963 and was transferred multiple times until 1998. In 2005 a Final Finding and Decision approved a preference right purchase for the parcel, but no appraisal was submitted so the preference right was closed. In 2016 the customer voluntarily relinquished the lease, and the case was closed. A 2010 field inspected revealed no improvements to the land. The October 2022 field inspection confirmed that no permanent improvements have been made within the parcel. There is a small area where some plywood is covered by a blue tarp.

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Cohoe, Ak Lots – ADL 234014 and ADL 234015

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There is a utility easement, ADL 42392, that passes through Lot 1, Block 2. The electric poles reside on property about 5 feet inside the western lot line and the Right-of-Way (ROW) is 40 feet wide. There are no known current uses of the land. These parcels are pre-surveyed lots within proximity to Kasilof and other great towns on the Kenai Peninsula. DNR DMLW expects the auction of these parcels to gather interest from surrounding landowners and new individuals looking to establish themselves in the area.

### **XI. Planning and Classification**

The project area is within Kenai Area Plan (KAP, adopted 2000), Region 6, Unit 93-B. 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 two surveyed parcels in the management unit. LCS reviewed the general management intent of the area plan and management unit for consistency with the proposed offering.

*Region 6, Unit 93-B Considerations:* Management intent states that sale or conveyance of lots that revert to state ownership may be allowed; and, if lots are resold, consider a setback to maintain public access to beach. LCS does not intend to impose a setback from the beach. There is a bluff along Cook Inlet which acts as a natural buffer from development along the beach. Additionally, none of the adjacent parcels have any setbacks or easements along Cook Inlet, and any setback or easement retained here would be isolated and inaccessible. Refer to Section **X. Background** for further discussion.

*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. Specific area-wide management intent and management guidelines affecting this proposal are discussed below.

*Forestry:* Management guidelines state that in units designated Settlement, a percentage of forest cover is available for timber production and included in the timber base unless prohibited by the management intent for the individual unit. Given the small size of these parcels and limited timber sale potential, LCS does not propose any timber harvest activities in advance of sale.

*Heritage Resources:* Management guidelines indicates that when found heritage sites need to be reported to the Office of History and Archaeology (OHA). During agency review OHA indicated that there are no known cultural resource sites within the parcels. Offering material will include information on archaeological sites and how to notify OHA of discoveries.

*Materials:* Generally, if a unit is designated Settlement but contains sand and gravel deposits, rock sources, or other similar, high-value materials resources, a pit area will be identified and retained in public ownership for future use before lands are offered for sale.

*Settlement and Agriculture:* These management guidelines have been considered in the development of this project. The applicable area-wide management guidelines regarding settlement include coordination with local governments, and erosion and

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flood control. ADL 234014 was previously leased but was terminated in 2019 due to a breach of contract. ADL 234015 was previously leased, but voluntarily relinquished in 2015. Both parcels are eligible for lease, sale, or conveyance. In accordance with management guidelines, they will be made available for lease, sale, or conveyance. The KPB Comprehensive Plan was reviewed and no conflicts with the proposed offering were found. During the public notice process KPB will be notified and included in the review of this proposal. LCS did identify any erosion or flood concerns within the project area. Refer to section **IX. Physical Characteristics and Hazards** for more information.

Fish and Wildlife Habitat: Guidelines indicate public access to public waters will be protected, whether through retained access or easements when lands are sold. Alaska Department of Fish & Game (ADF&G) has indicated that access to the Clam Gulch Critical Habitat area within Cook Inlet 2.5 miles north and 7 miles south are suitable. Refer to Section **X. Background** for further discussion.

Shorelines, Stream Corridors and Wetlands: Area-wide management guidelines state DNR should retain public access adjacent to waterbodies and a setback from Mean High Water when transferring land out of state ownership. ADF&G was consulted and considered an access easement to the beach along ADL 234015 but determined current access to the Clam Gulch Critical Habitat area both 2.5 miles north and 7 miles south to be adequate. Additionally, the bluff provides a natural buffer from MHW and is not necessary. Refer to Section **X. Background** for further discussion.

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

Mineral Activity and Order(s): No mineral activity has been identified on these lands. The project area is closed to mineral entry under Mineral Order (closing) No. 1060 and No. 1041.

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. Review of that plan did not indicate any conflicts with the proposed State land disposal.

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### **XII. Traditional Use Finding**

The project area is located within the KPB and a traditional use finding is therefore not required per *AS 38.05.830 Land Disposal in the Unorganized Borough*. However, information on current or traditional use is welcomed and can be given during the public comment period. See the **Section XVII. 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**

Access to Lot 1 Block 2 is via Cohoe Loop Road; Lot 10 Block 1 is via Cohoe Loop Road and the public and navigable waters of Cook Inlet. Cohoe Loop Road is within road service area W3 and maintained by the KPB.

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

For the purposes of *AS 38.05.127*:

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

Cook Inlet has been determined to be public adjacent to the project area. However, since these parcels are already surveyed, and since there are no other easements along MHW on the adjacent parcels, an easement on Lot 10, Block 1 would serve no purpose. As such, DNR will not be reserving an easement along MHW in accordance with *AS 38.05.127 Access To Navigable or Public Water*.

*Easements, Setbacks, and Reservations:* The parcels are subject to easements, setbacks, and reservations of record. In addition to platted easements and reservations, Lot 1, Block 2 is subject to a utility easement, ADL 42392 paralleling Cohoe Loop Road.

*Retained Lands:* None

### **XIV. Hazardous Materials and Potential Contaminants**

During a ground field inspection conducted on October 26, 2022, field staff did observe potential environmental hazards within the project area. Abandoned vehicles and structures as well as oil drums full of an unknown substance were observed on Lot 1, Block 2. DMLW is currently evaluating options for removal of the materials, vehicles, and/or structures on the parcel. There were no potential environmental hazards identified on Lot 10, Block 1. There are known environmental hazards present within the project area; however, the State makes no

## **Preliminary Decision**

Cohoe, Ak Lots – ADL 234014 and ADL 234015

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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 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 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 September 6<sup>th</sup>, 2022 through September 27<sup>th</sup>, 2022. 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.

DNR DMLW LCS received brief comments of non-objection from the following agencies:  
*DNR Office of Project Management and Permitting; Mental Health Trust Land Office; DNR Division of Parks and Outdoor Recreation; Department of Transportation and Public Facilities*

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

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### *DNR Division of Parks and Outdoor Recreation, Office of History and Archaeology (OHA)*

*Comment:* The Alaska Heritage Resources Survey (AHRS) database indicated there are no known cultural resource site within the identified parcels. Should discoveries be made OHA must be notified to evaluate their need for preservation.

*DNR DMLW LCS Response:* LCS appreciates your review of our proposal. Offering material will include information on reporting archaeological sites.

*DNR Division of Oil and Gas (DOG) Comment:* DOG does not have any objection to the proposed disposals. There are no oil and gas activities, third-party interests, or pending applications.

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

*DNR Division of Geological & Geophysical Surveys (DGGS) Comment:* DGGS summarized the geologic setting and hazards for the project area (summarized in Section **IX. Physical Characteristics and Hazards**)

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

*Alaska Department of Fish & Game (ADF&G) Comment:* ADF&G stated no objections to the sale of these parcels. LCS consulted ADF&G after agency review to consider the practicality of the building setback and easement. ADF&G concurred that the bluff creates an adequate self-enforcing building setback and that the isolated nature of the public access easement along MHW would provide no meaningful benefit.

*DNR DMLW LCS Response:* LCS appreciates your review of our proposal. ADF&G will receive a copy of the decision document once issued.

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

- Department of Environmental Conservation;
- Department of Natural Resources;
  - Division of Agriculture;
  - Division of Forestry
  - State Pipeline Coordinator's Section;
- Department of Commerce, Community, and Economic Development;
- 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.



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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, 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 Preliminary Decision including any deletions, minor changes, and summary of comments and LCS responses will be issued as a subsequent Final Finding and Decision without further notice.

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. Upon approval and issuance of a Final Finding and Decision a copy of the decision will be made available online at <http://landsales.alaska.gov/> and sent with an explanation of the appeal process to any party who provides timely written comment.

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, TUESDAY, MARCH 21, 2023**

#### **XVIII. Alternatives and Discussion**

LCS is considering the following alternatives:

Alternative 1: (Preferred) Offer the parcels for sale.

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

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Finding and Decision, will provide financial return to the State. Alternative 1 provides opportunity Alaskans to purchase land within the Cohoe Alaska Subdivision. Alternative 1 is preferred.

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.

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**XIX. Recommendation**

This Preliminary Decision for the proposed disposal of State lands described throughout this document and its attachments is 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. If the decision is approved, a Final Finding and Decision issued.

Signature on file

Prepared by: Meghan Montagne  
Natural Resource Specialist  
Land Conveyance Section  
Division of Mining, Land and Water  
Department of Natural Resources  
State of Alaska

2/14/2023

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

2/14/2023

Date



# Attachment A: Vicinity Map Cohoe Alaska Subdivision ADL 234014 & 234015

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
- Utility Easement - ADL 42392

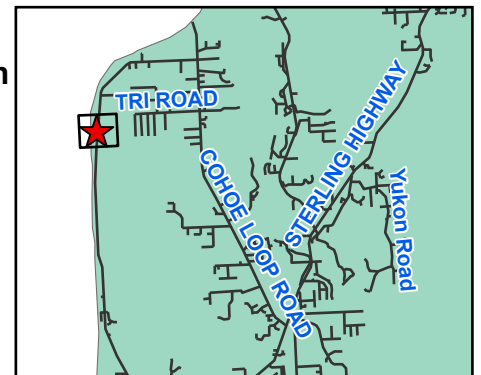
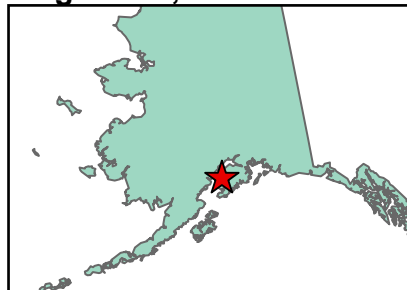


MM 01/03/2023

USGS QUAD 1:63,360  
Kenai B-4  
For more information contact:  
Meghan Montagne  
Department of Natural Resources  
Division of Mining, Land, and Water  
Land Sales Section  
Phone: 907-269-8655  
Fax: 907-269-8916  
Email: [land.development@alaska.gov](mailto:land.development@alaska.gov)



**Section 16, Township 3 N,  
Range 12 W, Seward Meridian**



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:  
**Cohoe, Ak Lots**  
**Lot 1 Block 2 – ADL 234014**  
**Lot 10 Block 1 – ADL 234015**

**COMMENT PERIOD ENDS 5:00PM, TUESDAY, MARCH 21, 2023**

This proposed project includes offering for sale surveyed parcels in a future offering under the method described in the Preliminary Decision document.

The parcels are located within DNR's Southcentral Region, approximately 5 miles northwest of Kasilof and 14 miles south of Soldotna, within Section 16, Township 3 North, Range 12 West, Seward Meridian, within the Kenai Peninsula Borough (KPB).

Parcel Size: ADL 234014 is 5.72 acres and ADL 234015 is 3.19 acres

To obtain a copy of the Preliminary Decision 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, Tuesday, March 14, 2023.

Pursuant to AS 38.05.945 Notice, the public is invited to submit comment on the Preliminary Decision. If commenting on more than one proposed action, separate comments should be submitted for each. **The deadline for public comment is 5:00PM, TUESDAY, MARCH 21, 2023.** 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 Meghan Montagne: [land.development@alaska.gov](mailto:land.development@alaska.gov), fax # 907-269-8916, or 550 W. 7<sup>th</sup> Ave., Ste. 640, Anchorage, AK, 99501. If you have questions, call Meghan Montagne at 907-269-8655.

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

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