

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

**PRELIMINARY DECISION**

**Anchor Point Heights Subdivision – ADL 232197**

**Proposed Land Offering in the Kenai Peninsula Borough**

*AS 38.05.035 (e), AS 38.05.045*

**RELATED ACTIONS:**

**Proposed Amendment to the Kenai Area Plan**

*AS 38.04.065*

**Proposed Land Classification Order**

*AS 38.04.065 and AS 38.05.300*

**Proposed Mineral Order (Closing)**

*AS 38.05.185 and AS 38.05.300*

**PUBLIC COMMENT PERIOD ENDS 5:00PM, TUESDAY, JANUARY 10, 2017**

**I. Proposed Actions**

*Preliminary Decision: Anchor Point Heights Subdivision - ADL 232197*

*Attachment A-1: Vicinity Map; Attachment A-2: Kenai Area Plan Classification Proposal*

*Attachment B: Area Data Summary Table*

*Attachment C: Public Notice*

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

*Draft Amendment to the Kenai Area Plan SC-99-002A11*

*Draft Land Classification Order SC-99-002A11*

*Draft Mineral Order MO No. 1174*

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 Sales Section (LSS) is to offer for sale State-owned land within the identified project area. If approved, surveyed parcels will be offered for sale.

Located within DNR's Southcentral Region, approximately 10 miles northwest of Homer and approximately 3.5 Miles southeast of Anchor Point the project area is within Section 13, Township 5 South, Range 15 West Seward Meridian, within the Kenai Peninsula Borough. The project area encompasses approximately 74 acres; however, after excluding development on wetlands, approximately 25 acres are identified for disposal by this proposed action. See *Attachment A-1: Vicinity Map* for a depiction of the project area.

In accordance with the governing area plan and for the purpose of providing land for settlement, DNR proposes to sell land within the Anchor Point Heights project area. In order to offer these lands for sale, if approved and deemed feasible, DNR may develop a subdivision of no more than 20 parcels varying in size from 40,000 square feet to less than

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5 acres; larger areas may be tracted out and reserved to the state. This proposed project area is located within the Kenai Peninsula Borough (KPB) and therefore survey, platting, and access to and within the project area will be subject to the relevant subdivision standards. LSS intends to apply for Single-family residential (R-1) Local Option Zone for the project. The project area may be subdivided and offered in multiple stages.

After consideration of public comment, the size and boundaries of the project area will be described in a subsequent Final Finding and Decision, if the project proceeds to that step. Additional adjustments may be made prior to 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.

Proposed Related Actions: The related actions will be developed separately; however, public notice is being conducted concurrently.

*Area Plan Amendment*: DNR proposes to amend the Kenai Area Plan (KAP) (adopted in 2000, updated August 2001) to incorporate abutting and near-by suitable sites into the settlement unit. DNR proposes to amend the designation of approximately 16 acres of Unit 333A from Water Resources to Settlement, and amend the designation of approximately 2 acres of Unit 333B from Settlement to Water Resources. The amendment will adjust the classification boundaries to better fit the terrain. Some wetlands within the current Settlement area (333B) will be designated Water Resources, while some potential developable areas within the abutting 60 acres of Water Resources area (a small portion of 333A) will be designated Settlement. Refer to the Planning and Classification subsection of this document for more information on this proposed related action. Also see Attachment A-2.

*Land Classification Order*: In relation to the Area Plan Amendment, DNR proposes to reclassify a portion of the project area in a Land Classification Order from Water Resources to Settlement, and reclassify a portion of settlement area from Settlement to Water Resources. Refer to the Planning and Classification subsection of this document for more information on this proposed related action and Attachment A-2.

*Mineral Order (Closing)*: DNR proposes a mineral order to close the project area to new mineral entry. There are no active mining claims in the project area. Refer to the Reservation of Mineral Estate subsection of this document for more information on this proposed related action.

Public Notice of Proposal: In accordance with *AS 38.05.945 Notice*, during a period of at least 30 consecutive days, the public will have the opportunity to submit written comment on this proposed land sales project, proposed area plan amendment, proposed land classification order, and proposed mineral order. Public notice for all actions is being conducted concurrently.

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

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### **II. Method of Sale**

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

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

### **III. Authority**

DNR has the authority under *AS 38.05.045 Generally* to sell State-owned land if, on preparation and issuance of a written finding, it is determined to be in the best interest of the State, as required by *AS 38.05.035(e) Powers and Duties of the Director*. Article VIII, Section 1, of the Constitution of the State of Alaska states, "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

For related actions, *AS 38.04.065 Land Use Planning and Classification*, *AS 38.05.300 Classification of Land*, and *AS 38.05.185 Generally* allow for amendments to area plans, land classifications, and mineral orders.

### **IV. Administrative Record**

The project file, Anchor Point Heights Subdivision – ADL 232197, constitutes the administrative record for this proposed action. Also incorporated by reference are the following:

- *Kenai Area Plan for State Lands (KAP)* adopted in 2000 (updated 2001) and associated land classification files;
- *Alaska Interagency Wildland Fire Management Plan* (2016);
- *KPB's Anchor Point / Happy Valley / Nikolaevsk Community Wildfire Protection Plan* March 2006;
- *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 September 9, 2015;
- DNR case files: Access Easement ADL 232162, Oil and Gas Lease ADL 392497, and Public Shooting Facility 221198; and
- *Kenai Peninsula Borough Comprehensive Plan*, June 2005.

### **V. Scope of the Proposal**

The scope of this proposal, under the statutes described in the preceding **Section III. Authority**, is limited and specific to DNR DMLW's proposal to offer State-owned land within the defined project area for disposal and to conduct the proposed area plan amendment, land classification order, and mineral order as described herein. The scope of this proposal does not include the control of post-patent use and DNR DMLW does not intend to impose deed restrictions for this purpose. The sale of parcels within the proposed subdivision may be conducted in multiple offerings.

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## **VI. Description**

Location: Within DNR's Southcentral Region, approximately 3.5 miles southeast of Anchor Point and 10 miles northwest of Homer, near Sterling Highway milepost 161, on the Kenai Peninsula. See Attachment A-1, Vicinity Map and *Attachment B: Area Data Summary Table* for additional information.

*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 Cook Inlet Region, Inc. (CIRI). The villages of Ninilchik and Seldovia are within 25 miles of the proposed action and notice will be sent to Ninilchik Traditional Council, and Seldovia Village Tribe.

Legal Description: The N1/2NE1/4 excluding Sterling Highway right-of-way and S1/2SW1/4NW1/4NE1/4 Section 13, Township 5 South, Range 15 West, Seward Meridian, located within the Homer Recording District, Third Judicial District, Alaska.

Title: Information from Title Report 8371, current as of 1/5/2016 indicates the State of Alaska holds fee title to the land and mineral estate within the project area boundary under Patent 1235379, dated 3/6/1964 and Patent 1227030 dated 5/23/1962. The applicable State case file is GS 107 for Patent 1235379 and GS 6 for Patent 1227030. 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):* There are no navigable or public waters within the boundaries of the project.

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

Physical Characteristics and Hazards: *Attachment B: Area Data Summary Table* describes the project area's physical characteristics. Information about the project area is based on internal research, information received during agency review, and on-the-ground field

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inspections conducted August 4 and October 13, 2015. This is by no means a complete description of the project area and if this proposal is approved and the area offered for sale, it will be the responsibility of interested parties to inspect individual parcels prior to purchase to familiarize themselves with the physical characteristics of the land.

*Soils:* Qutal silt loam on 0-4% sloping central portion of project area plus Benka silt loam on portions of steeper west and south parts together constitute the bulk of potentially buildable lands; marginal Starichkof and Doroshin soils may be found in some small portions of eastern segments. Division of Agriculture has commented that the developable areas include Class III and IV soils suitable for agriculture but not restricted to agricultural development. Known soil conditions will influence the project's design and feasibility and such features will be described in the project file and offering materials where relevant.

*Wetlands:* Approximately 50 acres of the 74-acre parcel constitute large open areas that support tundra-like or wetland vegetation. Most all of these lands will be avoided in subdivision design. LSS recommends these portions be included in the current land classification for water resources and use; see Retained Lands below and Proposed Related Actions above. Wetlands are a valuable part of the environment and provide a natural filter and buffer for waters draining northward that contribute input to the unnamed tributary of the Anchor River. The subdivision will be designed taking into account surface and subsurface water flow into anadromous waters and to adjoining regional aquifers. DNR proposes to impose a 50-foot development setback on all lots adjacent to wetland areas. This development setback is defined as the area which is to remain in its' natural state to promote slope stability, drainage protection to wet areas and/or protect viewshed Lands along the western and northern portions of the project area are generally higher elevation than wetland areas. Parcels will be located on and offered at the western and northern sites only.

*Geologic Hazards:* Information received from Division of Geological and Geophysical Surveys (DGGS) and information gathered during field inspections indicated the following specific geologic hazards for this area. Due to relatively near-by volcanoes and earthquake faults, general seismic hazard potential is high for the entire region. Parts of the bluff within the subdivision show evidence of possible slope erosion with marked scalloping along the bluff margin extending south from where the road crosses the bluff edge. A recent landslide is evident on the continuation of the bluff about ¼ mile to the northwest of the project's northwest corner. Due to soil types and underlying bedrock qualities, during conditions of water saturation and/or seismic shaking, steep slopes may become unstable and subject to sliding, erosion, and collapse. Standard best building practices should be used for site conditions and structures should be constructed at least 50 feet from the bluff crest. Because of potential slope hazards, a focused geologic hazard assessment by a qualified engineering firm is recommended prior to dwelling construction. Per KPB platting allowances, LSS intends to include a note on the subdivision plat to avoid vegetation disturbance that may destabilize the slope. Should other geologic hazards be discovered in the development of this proposal, information will be included in offering materials.

*Fire Hazards:* Due to extensive spruce bark beetle kill, most areas of the Kenai Peninsula face extremely serious wildfire hazard potential. Likelihood for wild land fire is

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generally high in this portion of the peninsula depending on seasonal weather conditions. The developable portions of the project area are bounded by natural and manmade firebreaks consisting of constructed right of ways and wetlands. Nevertheless, landowners with structures are encouraged to follow the Alaska Wildland Fire Coordinating Group *Firewise Alaska* recommendations. Offering materials include information regarding wild land fire prevention. The proposed subdivision is within KPB Anchor Point Fire and Emergency Medical Service Area. More detailed wildfire protection information for communities and individuals is available by consulting the Anchor Point / Happy Valley / Nikolaevsk Community Wildfire Protection Plan March 2006 (<http://forestry.alaska.gov/fire/cwpp/index>).

Fire management options and policies for the area are identified in the Alaska Interagency Wildfire Management Plan available from DNR Division of Forestry (<http://forestry.alaska.gov/fire/fireplans>). The current fire management option for the project area is “Critical.” The Operational Guidelines 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.” The plan also states that there is no guarantee of protection from wildfire in any management option, that response to a wildfire will be based on various factors, and that “Ultimately it is the responsibility of the [landowner] 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 Number 020012 4325 A, effective date May 19, 1981. The project area is within flood zone D, defined as: Area of undetermined, but possible, flood hazard. Because all buildable portions of the proposed disposal are on uplands approximately 100’ above the Anchor River, there is little practical risk from that source. USDA customized soil report for the project area stated that for soils within the proposed development area, frequency of flooding or ponding is none.

*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 immediate vicinity of the project area. No well or water quality information within the area was found. Water quality for this site is unknown.

**Background:** LSS staff identified this project area pursuant to a review of public easement ADL 232162. Very few parcels on the Kenai Peninsula have been offered in state public land sales in recent years adding to the appeal of this project. Initial and follow-up field inspections verified that this site would be very desirable for potential offering. The proposed project area is bound by state land to the north (classified ha/hv Habitat/Harvest [wildlife]) and private lands around all other boundaries. The Anchor River flows past the southwest corner of the project boundary approximately 100-vertical feet below the uplands proposed for development; an unnamed tributary is located about 200 feet north of the north boundary. Private lands to the west are a mixture of residential and commercial properties ranging in size from approximately 5 to 20 acres. Private property abutting the southerly boundary includes a .5-acre lot and an approximately 12-acre vacant lot and an approximately 28-acre commercial lot. Private lands to the southeast are a mixture of 5-10

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acre residential lots, largely undeveloped. Immediately to the east of the project area is a large, approximately 71-acre industrial property.

State lands classified for Settlement are relatively scarce on the Kenai peninsula. Due to limited space for building and the favorable location of the proposed land sale project, LSS has proposed smaller size residential parcels, i.e. from 40,000 square feet (minimum required by KPB subdivision ordinance) to less than 5 acres each. In addition to being subject to KPB subdivision ordinance Title 20, DMLW will seek Local Option Zoning R-1, Single -Family Residential pursuant to KPB 21.44. Subdivision design will offer the opportunity for a maximum number of Alaskans to obtain property in this desirable locality. Additionally, potential sale of more lots compared to just a few larger parcels will tend to boost economic return and would be in the state's best interest.

Based on field visits in August and October 2015 it was observed that there was past timber harvest activity, possibly around 2005, on the forested portions being considered for offering. It appears that only large, select trees were taken, as these areas have a nice population of mature spruce and some birch that do not appear to be second growth. Although partially abutting the Sterling Highway, signs of moose and bear were also observed in the proposed project area. No evidence of wildfire, hazardous material, or structures was observed during the 2015 field visits to the site. This is in contrast to comments made in the 2001 KAP regarding possible squatters living in or near this project location. Excellent views westward across Cook Inlet and eastward to Anchor River foothills as well as soil favorable for cultivation are positive features of this potential offering.

Slopes are generally greater than 20% between the top of the bluff and the highway along the southwest and western portions of the project area. DMLW survey staff recommended that it would be prudent management to include the rest of the state owned bluff-top area on the north side of Norman Lowell Road for disposal (that portion to be included in the settlement area). Further discussion with DMLW Resource Assessment and Development Section (RADS) established that exchanging the muskeg portions for the higher area just to the east, south of Alut Ave. would also make for efficient and best use of the state land in that vicinity. The October 2015 field inspection verified the desirability of that proposed related action.

An existing gravel road/driveway, Norman Lowell Road, passes through the southwest portion of the project area. This road provides access from the Sterling Highway across private land (KPB parcels ID's 16913306 & 16913305) and State land to Lot 1, Norman Lowell Subdivision, plat 2004-38, Homer Recording District (HRD). Norman Lowell Road was constructed by the private land owner in 1975 across state land without State of Alaska permit or easement. The owner, Mr. Smith, and others subsequently formed the Anchor Point Road Maintenance Association and, they asserted and posted that the signed road was for private use only. In 1986, Case No. 3KN-86-644 Civil, the state superior court finding of fact stated an improved driveway exists across the property of Mr. Smith. However, no mention was made regarding the unauthorized construction across public state land nor the restriction of that segment of driveway on state land for the exclusive use of any private property owners. Additionally, there is also the possibility that Norman Lowell Road passes through a small corner of the Department of Transportation and Public Facilities (DOT/PF) public right-of-way (ROW). DNR desires to work with DOT/PF and the adjacent private property owners in providing a continuous public access from the Sterling Highway

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to and within this portion of the state project area to possibly connect to this project's platted ROW while preserving the private drive eastward beyond the project area boundary.

Norman Lowell Subdivision, plat 2004-38 HRD, locates an existing overhead power line crossing the west boundary line in the vicinity of the existing road, known as Norman Lowell Road. The existing power line continues west, adjacent to Norman Lowell Road across State land, to the Sterling Highway. No State authorization was found for these surface activities that cross State land. LSS will work with the utility company and adjacent land owners to resolve this unauthorized use of state land.

Motor Way is an existing North-South gravel roadway approximately 18-feet wide situated generally along the west boundary of the project area. The road side-hills up the steep bank to physically connect the Sterling Highway to the dirt roadway (Alut Ave.) within the East-West 100-foot wide section-line easement on high ground along the northern boundary of the project area. The south half of Motor Way is located within the project boundary. Due to the steep side slope, the north portion of Motor Way, as it climbs to Alut Avenue, crosses onto private land, Lot 1 Block 1 Anchor Valley Estates, plat 83-37, Homer Recording District. ADL 232162 is an interim public access easement issued for the southern portion of Motor Way, i.e. that portion located on state land. However, this easement will only be finalized contingent upon acceptance of a public access easement or dedication across the edge of the private land that will allow for legal connection to Alut Ave. The DMLW Southcentral Regional Office (SCRO) Land Section is currently working with an applicant to establish a continuous public access easement over the entire current alignment of Motor Way. Once this route is approved, it will provide legal and physical access to the proposed project and will allow for future construction compliant with KPB ROW standards.

The Division of Oil and Gas approved Miscellaneous Land Use Permit (MLUP) (CI 16-001), effective March 17, 2016 to May 31, 2016 to conduct geophysical exploration within multiple townships of the Kenai peninsula. Approximately 50 linear miles of seismic drill holes and explosive charges was permitted to take place across approximately 82 sections (52,480 acres). Section 13, which includes the proposed project area, was part of that MLUP. DNR has no concern regarding this past activity in relation to the Anchor Point Heights proposed land sale. There is an active Oil and Gas Lease (ADL 392497 and associated file number CI-0814) that includes the proposed project area within the more than 4,100 acres of the lease which has an expiration date of 11/30/2023. Presently there is no oil and gas lease activity within the proposed subdivision boundaries. Offering materials will describe this third party interest. The Division of Oil and Gas has advised that questions regarding potential oil and gas exploration activity on parcels subdivided and offered within ADL 232197 should be directed to the Division of Oil and Gas, 907.269.8757. See more information under State reservations of Title above.

Public Scoping Meeting: DNR DMLW held an informal public scoping meeting to discuss the proposal and share information about the project area on July 13, 2016, 6 – 8 P.M. at the Anchor Point Chamber of Commerce building, 34175 Sterling Highway. Topics discussed included general state land sale information on subdivision, remote recreational cabin staking, and agriculture offerings; access issues relating mainly to the Anchor Point Heights project; and the possibility of potential future projects east of Homer. DMLW staff answered questions about existing Motor Way and the need to obtain an acceptable easement from the Sterling Highway to connect to Alut Ave. DNR is prepared to issue a public right of way



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(ADL 232162) across state land conditional on a valid and recorded easement across private land allowing connection to Alut Ave. being completed. On 4/6/2016 an interim entry authorization (expiring 3-29-2019) was issued and on 4-22-2016 as-built survey instructions were issued (file number 20160016) pursuant to acquiring full connection as discussed above. A large amount of time was devoted to discussion about the non-public roadway on the south side of Anchor Point Heights. DMLW staff expressed the desire to be of assistance in clarifying the issue of Norman Lowell Road or driveway crossing state land and the possibility of public use to connect the highway to the proposed project area on the south side while preserving the private use of the driveway for points east of the subdivision. The existing drive does not meet borough standards, and the owner made it clear he did not want any kind of public access on his private road. He shared that over the years he has had more than ample sad experiences with the public abusing and trashing the driveway and his property. He offered to provide DMLW with a copy of his US patent which he believes granted his private driveway forever. Furthermore, he offered to have his attorney send a copy of the 1986 State Court decision granting him the private drive status for his private roadway. Those in attendance, including the concerned neighbor, all expressed support for the projects presented. Subsequently, Case No. 3KN-86-644 Civil copy was received at DMLW. It documented the neighboring landowner had constructed Norman Lowell Road in 1975 across state land; this was done without state authorization. It confirmed the current position of DMLW that the finding and conclusions applied only to that portion of the drive that is on private lands and said nothing regarding an easement on that portion of the driveway that crosses state land. While DMLW is willing to work with appropriate stakeholders to see this issue corrected, the status of Norman Lowell Road should not prevent this project from moving forward at this time.

Based on research, field inspections, economic feasibility considerations, and consultation with RADS and other offices, the DMLW believes this proposed project will fit well with surrounding land use and should bring a favorable economic return to the state.

Planning and Classification: The general management intent of the area plan, region and unit, were reviewed for consistency with the proposed offering. The project area is within the Kenai Area Plan (KAP), adopted in 2000 (updated 2001), Region 7 - Homer, Units 333A and 333B (see Region 7, Map 7C – Homer, Kachemak Bay). Unit 333B contains the main developable portion located along the western part of the project area. Lands within this unit are currently designated Settlement (se), and classified Settlement under Land Classification Order No. SC-99002. That portion of the proposed project falling within Unit 333A, currently designated and classified as Water Resources and Uses (wa), will need to be reclassified and designated as se. The project area covers almost all of Unit 333B (approximately 15 acres) plus the abutting approximately 60-acre portion of Unit 333A. Unit 333A consists of 3613 acres, but only about 17 acres will be utilized for the proposed offering. The majority of the 74-acre project area is open muskeg, and DMLW proposes to retain most of those lands in state ownership. This step will also necessitate changing part of Subunit 333B to wa classification. See Attachment A-2.

*Unit/Region KAP Considerations:* Management Intent for both Units 333A and 333B describes that these units or nearby lands may be considered for an authorization for a Community Shooting Center. Management intent provides that if such development occurs, and the area is downrange, uses within these units may be restricted to protect public safety. An application for a public shooting range (ADL 221198) was closed 01-

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02-2003; construction of the center did not take place in the vicinity of the proposed project. This was also verified by a call to the KPB Planning Department on April 10, 2015 where the Borough Platting Officer stated he was not aware of any formal shooting facility at the project site area. The surveyor who provided plat 2003-30 for the shooting center verified it is located just north of the Sterling Highway approximately one mile northwest of the proposed subdivision project area. The shooting direction from this shooting center is to the northeast, away from the proposed subdivision. Based on this information, DNR has concluded there is no need for public safety restrictions at the proposed project site due to the shooting range. Other Resources and uses for both units also describe that there may be trespass residences within or adjacent to these units. No unauthorized structures or trespass residences were observed during the 2015 field inspections.

Unit 333A (3613 acres): KAP does not identify any specific resource or use for which this unit is designated. Management intent for Unit 333A also describes that the unit may be used as a potential community drinking water source, and is currently an aquifer recharge area. Other uses and resources described for this unit indicate that the area is ninety percent wetlands, the area receives low public use, and it is visible from the Sterling Highway. The resource information lists that two tributaries of the South Fork Anchor River flow through the area, and lists the area as a winter moose concentration area and general distribution of waterfowl. The tributaries listed are north of the project area within the larger contiguous portion of Unit 333A. Impacts to moose and waterfowl will be mitigated by retaining most of the wetlands within the proposed project area in state ownership. The Resource Allocation Table stated, "Pioneer Timber sale is scheduled for 2005 in the western portion of this unit." As noted above, there is evidence of past timber harvest within the project area.

Unit 333B (15 acres): KAP indicates that this unit is designated for direct access off the Sterling Highway. Other resources and uses for this unit describes that this unit is important moose habitat, and that the Sterling Highway adjacent to this unit gets the highest number of moose kills every year on the entire Kenai Peninsula. Impacts to moose habitat will be mitigated by retaining in state ownership most of the wetland areas (approximately 50 acres) within the approximately 74-acre project area. The KAP also indicates that there are cultural sites present. LSS consulted DNR Division of Parks and Outdoor Recreation, Office of History and Archeology (OHA) and has been advised that there are no reported cultural sites within the proposed project area. If any cultural resources are discovered during the development of this project OHA will be notified.

*Area-wide Considerations:* LSS reviewed the area plan's Chapter 2 area-wide Goals, Management Intent and Guidelines in general and specifically sections regarding Fish and Wildlife Habitat and Harvest; Heritage Resources; Materials; Settlement; Shoreline, Stream Corridors and Wetlands; Trails and Access; Transportation and Utilities; and Water Resources. These considerations will be incorporated into the design and development of the project. Lands to be retained in public ownership, conditions, and reservations will be included on the plat and in offering materials as appropriate. Specific area-wide management intent and management guidelines affecting this proposal are discussed below.

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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. The proposed project development area is located in close proximity to fish and wildlife habitats. ADF&G was consulted during Agency Review and stated no objection to the proposed project. ADF&G concurred with the reservation of a 50-foot wide development setback from wetland areas and recommended a 200-foot wide vegetated buffer and building setback from the Anchor River. Impacts to Fish and Wildlife Habitat will be mitigated by retaining most of the wetlands within the project area and by taking into account the KAP 200-foot building set back from the Anchor River.

Heritage Resources: Management guidelines provide that cultural surveys or inventories should be conducted prior to the design of land offerings in areas 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. LSS coordinated with OHA early in the development of this proposed project. OHA has indicated that actions for the proposed project area do not conflict with their interests. OHA will be notified should any discovery of cultural resources occur during the development of this project.

Materials: Management guidelines provide that generally, if a unit is designated Settlement but contains high-value material resources, a pit area will be identified prior to the land offering, and be retained in public ownership. No significant material resources have been identified within the proposed land sale area.

Settlement: Management guidelines provide for the identification of open space or recreational lands within a subdivision where appropriate. Additionally, management intent also provides that prior to the disposal of land [DNR] shall, to the extent feasible, evaluate flood and erosion hazards. Given the expanse of low lying wetland areas within the project boundaries, a large portion of the project area will be retained in state ownership. Field inspection did not identify any current recreational use of the area. With the limited density of the proposed subdivision, and the availability and access to other public land in the area, DNR is not proposing to identify open space or recreational lands within the project area. The project area is within an unidentified flood zone; however, given the location of the development area on higher elevations, flood risk is rather limited. Information from the USDA custom soils report did not identify any specific concerns with erosion issues. DGGs did discuss the potential for erosion on the steep bluff. Refer to **Section VII. DMLW and Agency Review** for more information.

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 provides for minimum widths for retention or building setbacks along waterbodies. The minimum width for retention areas

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adjacent to anadromous and high-value resident fish streams is 200-feet landward from ordinary high water (OHW).

No streams are located within the project area. The Anchor River lies immediately to the southwest of the project area and is identified by ADF&G as an anadromous stream. Developable portions of the project area are situated approximately 100 feet in elevation above the main branch of the Anchor River and more than 200 feet from OHW. As allowed by KPB ordinances, plat note requirements to maintain stability of the bluff will ensure that the KAP river buffer minimum width will be met. An unnamed anadromous tributary of the Anchor River is in section 12 north of the project area and may be slightly less than 200 feet from the north boundary of the project area. State land in section 12 is designated and classified as [wildlife] Habitat/Harvest and will serve as a buffer between the land sale project and the OHW mark of the stream. The project will be applying for KPB's Single-family residential (R-1) Local Option Zone, which requires additional setbacks. Along with the 50 ft. section line dedication, this will ensure that no structure will be located within 200 feet of these waters. Furthermore, the existing Alut Ave. roadway itself acts as a hardened barrier between the proposed subdivision and the stream.

Management guidelines also note that wetlands within the KAP which are important as watersheds were designated as Water Resources and Uses (wa). A portion of the proposed project area is currently designated wa. Project design will generally limit development to the upland areas and retain most wetlands (approximately 50-acres of the 74-acre project area) in state ownership. In order to mitigate impacts to the wetlands and general watershed, DMLW proposes a 50-foot development setback on all lots, as allowed by KPB platting regulations, from any wetland margins.

**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. There are no trails identified within the project area. Access to and within the area will be reserved along existing roads and platted ROWs as appropriate. See the Access To, Within, and Beyond Project Area section for more information. Because of the limited size of the proposed subdivision and existing access, there are no planned public use trails within or through the developable areas.

**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. DNR is not proposing to identify any new access from the Sterling Highway through this project. DOT/PF noted that any sale should be subject to access to borough standards. Physical and legal access will be planned with future use in mind and in coordination with DOT/PF and the KPB as appropriate to ensure compatibility with their ROW needs and ordinances. No management guidelines are given for utilities pertaining to the project area.

**Water Resources:** KAP does not provide any Water Resources management intent applicable to this project. Refer to the management intent regarding Shorelines, Stream Corridors and Wetlands.

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The proposed offering will be consistent with area-wide land management policies and general management intent of the KAP and specific management units if the proposed area plan amendment, land classification order, and mineral order are approved in accordance with *AS 38.04.065 Land Use Planning and Classification*, *AS 38.05.300 Classification of Land*, and *AS 38.05.185 Generally*. Approximately 16 acres of the project area that are currently designated and classified Water Resources and 2 acres that are currently designated and classified Settlement will require an area plan amendment and land classification order prior to disposal as discussed below.

*AS 38.04.065 (b) Requirements:* The factors identified in this section of statute have been considered in this plan amendment and the proposed action is consistent with that portion of statute.

### *Area Plan Proposal:*

*Area Plan Amendment:* In order to include a slightly larger acreage for offering and to retain most wetlands in state ownership, DNR proposes to amend the KAP. DNR proposes to amend the designation of approximately 16 acres of Unit 333A from Water Resources to Settlement, and amend the designation of approximately 2 acres of Unit 333B from Settlement to Water Resources. This proposed amendment will designate the higher elevation, settlement-suitable lands in the adjoining 60 acres of Unit 333A within the project area to settlement, to be included into Unit 333B; and designate the lower elevation/wetland areas within Unit 333B Water Resources to be included into Unit 333A. Refer to the Draft Amendment to the Kenai Area Plan SC-99-002A11 and Attachment A-2 for more information.

### *Classification Proposal:*

*Land Classification Order:* In relation to the proposed Area Plan Amendment, the proposed Land Classification Order will reclassify approximately 16 acres from Water Resources to Settlement, and reclassify approximately 2 acres from Settlement to Water Resources. This reclassification will conform to the amended designations of the proposed Area Plan Amendment. Refer to the Draft Land Classification Order SC-99-002A11 and Attachment A-2 for more information.

*Mineral Activity and Order(s):* No mineral activity has been identified on these lands. The entire project area (approximately 74 acres) will be closed to mineral entry if Mineral Order No. 1174 is approved in accordance with *AS 38.05.185 Generally* and *AS 38.05.300 Classification of Land* for a land disposal.

Mineral closing orders, where established, close an 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.

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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 proposed state land disposal.

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

Access To, Within, and Beyond Project Area: Access to the project area is anticipated by vehicle from the Sterling Highway. Existing practical/physical access via Motor Way is currently in need of legal access. This approximately 18-foot wide, dirt road connects the highway to the 100-foot wide section-line easement, dirt roadway Alut Avenue, common to sections 12 and 13 along the north boundary of the project area. DMLW SCRO Land Section is currently adjudicating an application for a public access easement (ADL 232162). If approved, ADL 232162 will provide a legal access easement over state land for the southern portion of Motor Way. The northern portion will then require a public easement or dedication over private land in order to reach Alut Ave. DNR also proposes to work with adjacent private property owners to the south in providing continuous public access from the Sterling Highway through the project area via Norman Lowell Road. Within S1/2NE1/4 section 13 Norman Lowell Road will remain a private drive southeastward outside the project area boundary. Internal Anchor Point Heights subdivision access will be via platted right-of-ways subject to KPB road standards. Subdivision design will take into account topography and will not preclude public access to lands beyond the project area. The project area is within KPB Road Maintenance Unit S4 and is subject to the platting authority of the KPB. Approval of platting actions and dedication of right-of-ways 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 right-of-ways as necessary to ensure unobstructed access to and along the body of water. Regulations dictating the creation of easements or right-of-ways 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

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- waters may be determined public or navigable consistent with AS 38.05.965 (18) *Definitions*.

DNR 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 100-foot building setback from the OHW of the water body. The Anchor River lies outside of the project area to the southwest, and meets the criteria of a public waterbody. See discussion under Shoreline, Stream Corridors and Wetlands above.

*Easements, Setbacks, and Retained Lands:* Subdivision design may include a variety of easements, setbacks, and retained lands, which will be identified on the subdivision plat and included in related informational documents as appropriate. 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:

- a public access easement;
- a utility easement;
- Local Option Zone (R-1) requires various setbacks or other similar vehicle allowed by the platting authority;
- 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*;
- a 50-foot development setback from wetland areas on lots directly abutting wetland areas as appropriate. The development setback, subject to platting authority compatibility, is to remain in its natural state to promote slope stability, drainage protection to wet areas and/or to protect viewsheds;
- a 50-foot development setback from the top of the bluff. See prior point for definition of development setback;
- a 200-foot building setback or comparable alternative from the Anchor River and its tributary;
- 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' 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; and
- A public access easement or dedicated ROW access, in association with easement ADL 232162, from the Sterling Hwy to Alut Ave.

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- A public access easement(s) or dedicated ROW(s) from the Sterling Hwy to the south end of project with internal platted ROW(s). KPB platting authorities will have a separate public process for platting actions.

Where appropriate, reservations and restrictions will be depicted on the plat and described in plat notes.

Hazardous Materials and Potential Contaminants: During on-the-ground field inspections conducted on August 4 and October 13, 2015 DMLW 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.

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

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

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 an approved Final Finding and Decision, if the project proceeds to that step.

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

Project research and development includes consideration of economic factors utilizing market data and project development costs compiled by DNR staff, which determines the economic feasibility of a project. Since it commonly takes several years for the project



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development process, AS 38.05.840 ensures that current market conditions are addressed in order to obtain a realistic minimum bid or purchase price for the sale of State land.

## **VII. DMLW and Agency Review**

Information and comments received from multiple sections within DMLW prior to and during agency review have been considered and included in the preparation of this preliminary decision. Agency review was conducted from November 4, 2015 through December 28, 2015. Comments pertinent to this proposed action received during agency review have been considered and addressed below. Additional timely comments that may be received during the Public Notice period will be considered and addressed in a subsequent Final Finding and Decision, if one is issued.

*Division of Oil and Gas (DOG) comments:* Because active oil and gas lease ADL 392497 affects the entire project area and does not expire until November 30, 2023, DOG recommends potential applicants be notified that the land is subject to that lease and potential oil and gas activity. Also, potential applicants should be made aware that the State reserves oil, gas, minerals, fissionable material, geothermal resources, and fossils that may be in or upon the land that is sold along with the right to enter to explore, develop, and produce these resources under provisions of Section 6(i) of the Alaska Statehood Act, Alaska Statute (AS) 38.05.125 and AS 38.05.130.

DNR received additional comments from DOG on March 17, 2016 regarding South Kenai 2D Seismic Program permit approval. Comments stated explosive charge or vibration seismic exploration will occur from mid-March through May 31, 2016 throughout multiple townships to include the project area.

*DNR DMLW LSS Response:* Offering materials will provide information about the current oil and gas lease, and the state's reservation of the mineral interest. Refer to the Background sub-section for more information. LSS anticipates no conflicts with the 2016 2D Seismic exploration activity described.

*Department of Fish and Game (ADF&G) comments:* The department reviewed the proposed state subdivision. ADF&G has no objection to the Anchor Point Heights Subdivision, as proposed, and concurs with the reservation of a 50-foot wide building setback in wetland areas. Although the Anchor River is outside the project boundary, ADF&G recommends a 200-foot wide vegetated buffer and building setback from the ordinary high water mark of the river.

*DNR DMLW LSS Response:* The review and information are appreciated. The KAP does not specify a building set back from wetlands, and very few lots will be in contact with wetlands. To cover those that do have wetlands contact, DNR proposes a 50-foot development setback from wetlands within lots.

While there are no anadromous waters within the project area boundary, the Anchor River is south of the project area. Parcels to be offered will be platted no closer than 200 feet from the Anchor River OHW. An unnamed anadromous tributary of the Anchor River is north of the project area in Section 12. This state land (KAP Unit 344A) is classified wildlife Habitat (ha) and Harvest (hv), and is not a part of this proposal. The

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north boundary of the subdivision is approximately 200 feet from this tributary. In addition to the 50-foot section-line easement dedication of Alut Ave., the 30-foot front yard setback required by R-1 Local Option Zone will assure that buildings are located more than 200 feet from the river or its tributary.

*Division of Agriculture (DAg) comments:* DAg noted that the project area includes approximately 12 acres of Class III soils and approximately 7 acres of Class IV soils, suitable for agriculture use. DAg encouraged LSS to design the project such that several parcels contained approximately 50% of these soils, and recommended that this feature be identified in the decision and sales brochure as having agriculture potential, but not restricted to Agricultural development.

*DNR DMLW LSS Response:* The review and information are appreciated. DMLW considers the soils as a favorable aspect of the proposed offering and will add information about parcels containing soils suitable for agriculture potential to offering materials. However, with the limited area available for development and the proposed small parcel size, some parcels may not contain 50% of Class III or IV soils.

*Division of Geological and Geophysical Surveys (DGGS) comments:* Nearly all of the western half of the Kenai Peninsula is underlain by coal-bearing Kenai Group; no detailed information was available for the project area. There is no known hard rock (metallic) mineral potential in the area, and DGGS does not anticipate potential unidentified metallic mineral resource conflicts. The steep bluff may have parts of active erosion along the west margin and marked scalloping along the south boundary. A recent landslide was detected on lidar imagery at least ¼ mile northwest of the project area bluff. Due to clay and silt deposited in an ancient glacier-dammed lake and underlying bedrock, during conditions of water saturation or seismic shaking, steep slopes may become unstable and subject to sliding, erosion, and collapse. The region's general seismic hazard potential is high. Standard best building practices should be used to accommodate these hazards. DGGS recommended a general advisory about the slope instability hazard and recommended that LSS consider a building set-back from the bluff edge perhaps in conjunction with a geologic hazard assessment by a qualified engineering firm.

*DNR DMLW LSS Response:* The review and information are appreciated. Offering materials will include information about general geologic hazards common to the region, the potential for slope failure, and recommendation to consult with qualified engineering firm. DMLW will impose a 50-foot development setback from the top edge of the bluff, on all lots adjacent to bluff, which will be included on the subdivision plat as allowed by KPB regulations. All construction activity must comply with KPB platting authority ordinances. DMLW also recommends that responsible landowners employ best building practices and consult with qualified professionals regarding the safest way to locate structures in relation to the bluff and other site considerations. Potential purchasers are encouraged to visit the location and check the parcel of interest to see if it will meet their personal needs prior to purchase.

*Homer Soil and Water Conservation District (HSWCD) comments:* Recommendations were made to carefully evaluate Green Infrastructure (GI) factors such as wetlands, drainages, and steep slopes with awareness of impact on hydrologically connected anadromous habitat; leave functional, undisturbed buffers (e.g. 100+ feet) around GI areas; lay out safe,

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year around access meeting KPB subdivision and road standards; increase minimum lot size from ½ acre to the KPB required 40,000 square feet; be sure a final plat includes wastewater disposal certification signed by an engineer; and reclassify KAP Unit 333A to se/settlement.

*DNR DMLW LSS Response:* The review and information are appreciated; recommendations have been considered in the development of this proposal. DNR recognizes the importance of the green infrastructure contributing to the watershed quality and flow of water that eventually becomes part of anadromous waters including the Anchor River. Approximately 2/3 of the project area, mainly comprising the wetland locations, has been excluded from development and will be retained by the state. Thus there should be minimal disruption to the natural drainage; please see discussion in conjunction with ADF&G comments. DMLW has also imposed a 50-foot development setback from wetlands and from the top of the steep slope on lots directly adjacent to these terrain features. See also discussion in conjunction with DGGs comments. Because constraints of terrain will guide the location of 60-foot wide platted roadways within the proposed project, the recommended 100-foot undisturbed buffer will not be practical. In keeping with the spirit of GI protection, where feasible the internal ROWs will be routed within a 100-foot corridor parallel to wetlands and will be located as far from the wetland margin as practical. It is anticipated that landowner use will create very little traffic on internal ROWs and have minimal impact on adjacent wetlands. Such internal roadways will also serve as hardened barriers between landowner development, restricting drainage from parcel development directly to the wetlands. All applicable requirements specified by the local platting authority, KPB subdivision ordinance Chapter 20 and 21, will be met including a minimum 40,000 square foot lot size, year-round access standards, and certification signed by an engineer. KPB Local Option Zoning R-1 (KPB 21.44)<sup>1</sup> will be sought to further protect the GI features of this project. DMLW emphasizes that portions of Unit 333B currently classified Settlement (se) will be changed to Water Resources and Uses (wa) and only a small part of Unit 333A, adjoining Unit 333B and found at higher levels than the actual wetlands, will be reclassified for se. See **I. Proposed Actions**, Proposed Related Actions, and Attachment A-2.

*Department of Transportation and Public Facilities (DOT/PF) comments:* Based upon our review of the documents provided our only comment would be in regards to perfecting access. Any sale/transfer should be subject to access platted/constructed up to Borough Standards minimum 60 feet in width.

*DNR DMLW LSS Response:* All rights-of-way and access will conform to KPB and DOT/PF ordinances and requirements. If the Motor Way route is confirmed by ADL 232162 and contingent connection dedication, the roadway will be accommodated within a 60-foot plus wide platted easement that will allow ample width for future construction to KPB road standards. Similar consideration will be given with the goal of negotiations regarding Norman Lowell Road.

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<sup>1</sup> KPB 21.44.160 residential, R-1, C Development Standards: 1. Setbacks for structures shall be 30 feet from the front yard line, 20 feet from the rear yard line, 15 feet from the side yard lines, and 50 feet from the shore and where applicable subject to the provisions of KPB 21.18 [Anadromous Waters Habitat Protection]. 3. Minimum lot size shall be 40,000 square feet. Maximum lot size is 5 acres. 5. Existing natural drainage ways shall be retained.

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The following agencies or entities submitted comments of non-objection:

Alaska Railroad Corporation

Division of Parks and Outdoor Recreation, Office of History and Archaeology

Mental Health Trust Land Office

State Pipeline Coordinator's Section of Division of Oil and Gas

The following agencies or groups were included in the agency review but no comments were received:

- Department of Natural Resources;
  - Division of Forestry (provided research consultation but submitted no comments);
- Department of Environmental Conservation;
- Department of Commerce, Community, and Economic Development; and
- University of Alaska.

## **VIII. Submittal of Public Comments**

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

Pursuant to *AS 38.05.945 Notice*, DNR is issuing public notice inviting comment on this Preliminary Decision, draft area plan amendment, draft land classification order, and draft mineral order.

In accordance with *AS 38.05.946 (a) Hearings*, a municipality or corporation entitled to receive notice under *AS 38.05.945 (c)* may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the Commissioner (or representative) shall attend the hearing. The Commissioner has discretion whether or not to hold a public hearing.

DMLW will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the Preliminary Decision, draft area plan amendment, draft land classification order, or draft mineral order, additional public notice for the affected lands will be given. Reducing the amount of land offered and making minor changes to any of the proposals will not be considered significant changes requiring additional public notice.

If the proposals are approved and no significant change is required, the Preliminary Decision, draft area plan amendment, draft land classification order, and draft mineral order including any deletions, minor changes, and summary of comments and LSS responses will be issued as a subsequent Final Finding and Decision, KAP Amendment No. SC-99-002A11 Land Classification Order SC-99-002A11 and Mineral Order 1174 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.

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Only persons from whom DNR DMLW LSS receives timely, written comment during the identified comment period will be eligible to file a request for reconsideration of the Final Finding and Decision, KAP Amendment No. SC-99-002A11 Land Classification Order SC-99-002A11 and Mineral Order 1174. Upon approval and issuance of these actions, a copy of the decision, orders, and amendment 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.

DNR is prepared to accommodate individuals with disabilities by providing auxiliary aids, services, or special modifications in order to participate in this review. Individuals who may need such assistance should contact the Department's Public Information Center. For more information, refer to *Attachment C: Public Notice*.

### **DEADLINE TO SUBMIT WRITTEN COMMENT IS 5:00 PM, TUESDAY, JANUARY 10, 2017**

## **IX. Alternatives and Discussion**

DNR DMLW is considering the following alternatives:

Alternative 1: (Preferred) Survey and plat a subdivision of no more than 20 parcels varying in size from 40,000 square feet to less than 5 acres authorized by this decision, and offer those parcels for sale. The development and sale of these parcels may be done in one or more offerings. This proposal includes the amendment to the KAP, land classification order, and mineral order.

Alternative 2: Do not subdivide the project area prior to offering. Offer the project area as a single, combined 74-acre project.

Alternative 3: (Status Quo) Do not offer this project area for private ownership. Retain all 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 help 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 DNR DMLW to create and design a subdivision which will provide for improved delineation and utilization of both wetlands and settlement resources thus boosting the best use and development of the land; retain a vast majority of project area wetlands to the state; and obtain a favorable 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, including well situated high ground with excellent views, location relative to the communities of Homer and Anchor Point, developed access to the project area, and the proximity to existing electrical utility and other residential private property; the project area is better suited to subdivision prior to offering. Alternative 1 is preferred.

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Alternative 2 does not maximize public interest and financial return to the State. Offering the project area to a single applicant would limit the offering to only one purchaser and deny many Alaskans the opportunity to purchase land in this desirable area. Additionally, offering the project area as a single 74-acre parcel would disallow the reservation of wetland areas and retention of public land within the project area. Alternative 2 is not preferred.

Alternative 3 is not preferred. The Legislature and the public have indicated a desire for DNR DMLW to offer State-owned land for private ownership. Retention of this land would inhibit DNR DMLW from meeting its Constitutional, statutory, and legislative obligations. 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. The related actions are necessary to allow for the offering of the project area. The primary action and related actions are dependent upon one another, and if DNR DMLW does not approve the offering, the related actions will not be processed.

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

Recommendation follows.

## **Preliminary Decision**

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### **X. Recommendation**

This Preliminary Decision for the proposed disposal of state lands, KAP Amendment No. SC-99-002A11, Land Classification Order SC-99-002A11, and Mineral Order 1174 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, KAP Amendment No. SC-99-002A11, Land Classification Order SC-99-002A11, and Mineral Order 1174. If the decision is approved, KAP Amendment No. SC-99-002A11, Land Classification Order SC-99-002A11, and Mineral Order 1174 will accompany and precede any Final Finding and Decision issued.

/s/

Prepared by: John W. Thomas, Adjudicator  
Natural Resource Specialist III  
Land Sales Section  
Division of Mining, Land, and Water  
Department of Natural Resources  
State of Alaska

11/28/2016

Date

/s/

Approved by: Kathryn Young  
Section Manager  
Land Sales Section  
Division of Mining, Land, and Water  
Department of Natural Resources  
State of Alaska

11/28/2016

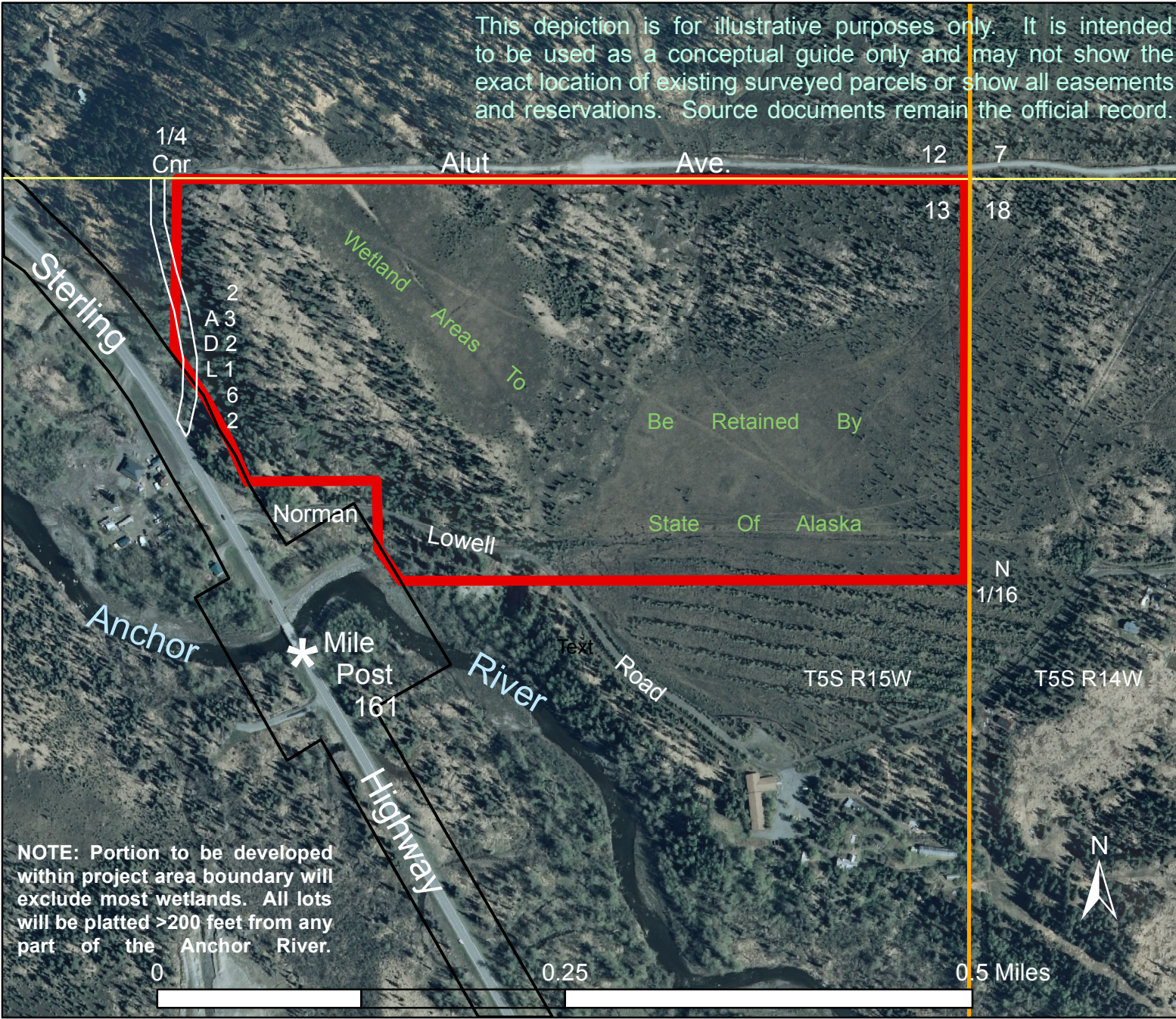
Date





# Anchor Point Heights Subdivision ADL 232197

**Attachment A-1: Vicinity Map**  
to the Preliminary Decision for a  
Proposed Land Offering in the  
Kenai Peninsula Borough



**Legend**

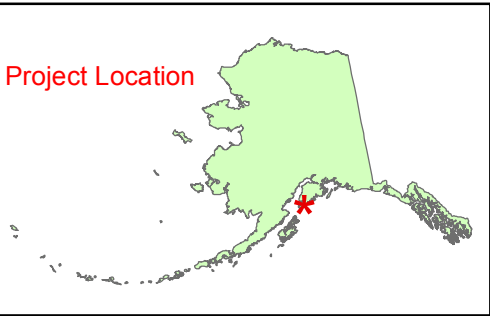
JWT 11/4/2016

- TOWNSHIP Line
- SECTION Line
- SterlingHwyROW
- Proposed Project Boundary

Portions of N1/2NE1/4  
Section 13, T5S, R15W,  
Seward Meridian

**USGS QUAD 1:63,360**

Seldovia (C-5) Quadrangle  
For more information contact:  
John W. Thomas or Cliff Baker  
Department of Natural Resources  
Division of Mining, Land and Water  
Land Sales Section or Survey Section  
Phone 907.269.8591 or 269.8522  
Fax 907.269.8916  
Email [land.development@alaska.gov](mailto:land.development@alaska.gov)

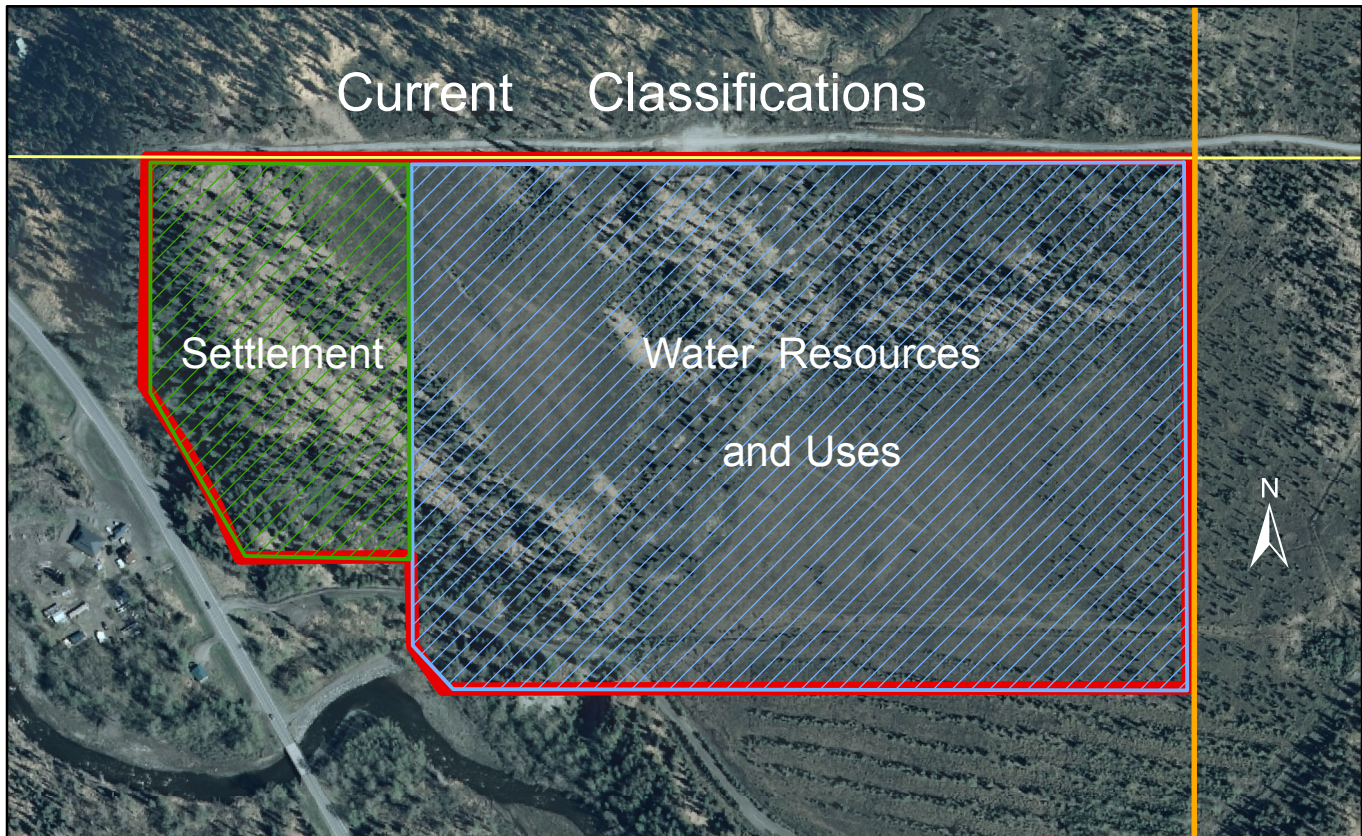




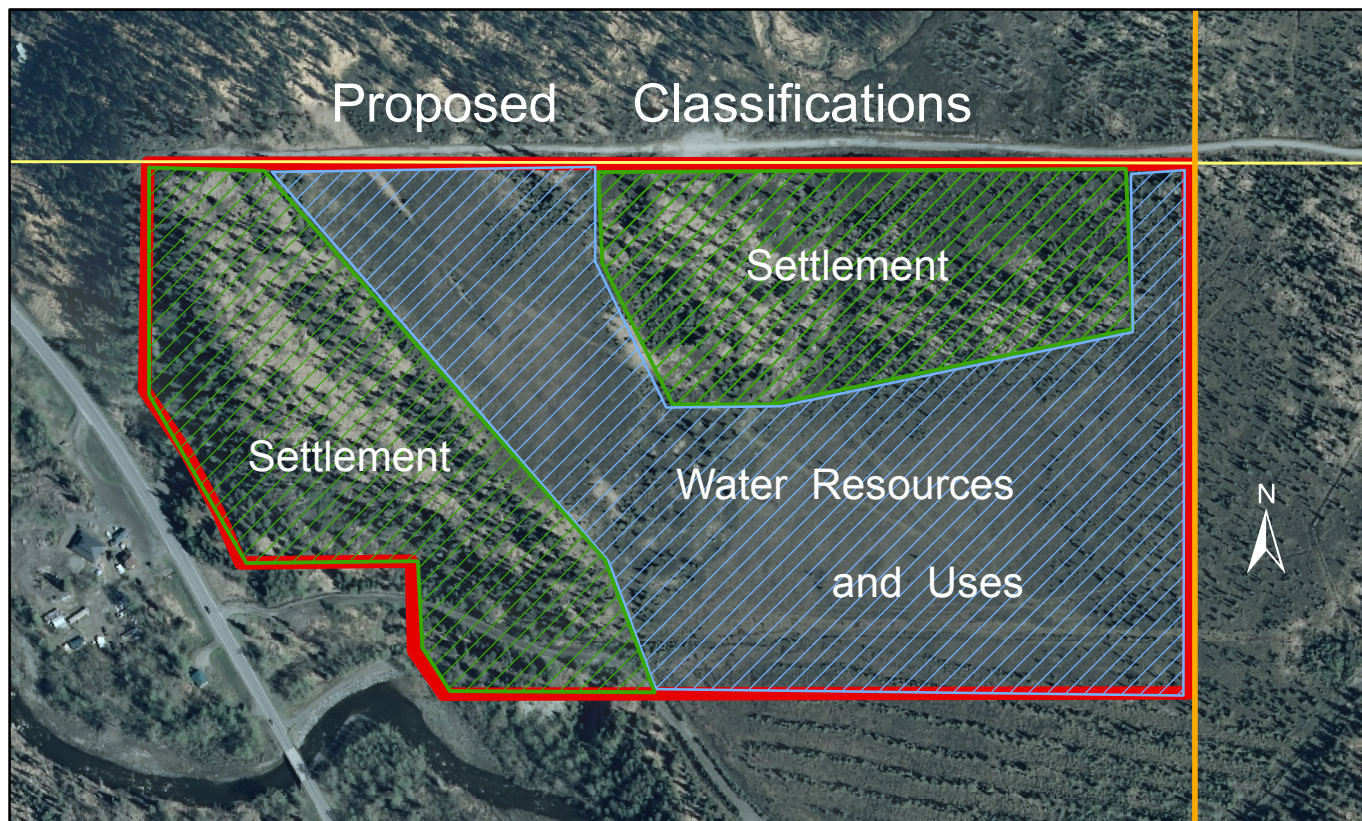


# Anchor Point Heights Subdivision ADL 232197

## Attachment A-2 Kenai Area Plan Classifications Proposal



These depictions are for illustrative purposes only. They are intended to be used as a conceptual guide only and may not show the exact location of existing surveyed parcels or show all easements and reservations. Source documents remain the official record.





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

**ATTACHMENT B: AREA DATA SUMMARY TABLE**

to the  
**Preliminary Decision**

for a  
**Proposed Land Offering in the Kenai Peninsula Borough  
Anchor Point Heights Subdivision – ADL 232197**

<b>Offering Information</b>	
<b>Proposed Number of Parcels</b>	Up to 20 parcels
<b>Proposed Parcel Size</b>	Varying in size from approximately 40,000 square feet up to less than 5 acres
<b>Proposed Related Actions</b>	Amendment to the KAP SC-99-002A11, Land Classification Order SC-99-002A11, and Mineral Order 1174 (closing)
<b>Project Area</b>	
<b>Location</b>	Approximately 3.5 miles southeast of Anchor Point and 10 miles northwest of Homer, northeast of the Sterling Hwy near MP 161
<b>Project Area Acreage</b>	Approximately 74 acres, of which approximately 25 acres proposed for development
<b>USGS Topography Map</b>	USGS Quad Seldovia (C-5)
<b>Legal Description</b>	N1/2NE1/4 excluding Sterling Highway right-of-way and S1/2SW1/4NW1/4NE1/4 Section 13, Township 5 South, Range 15 West, Seward Meridian
<b>Title</b>	State-owned land, Patent 1235379 dated 3/6/1964 and patent 1227030 dated 5/23/1962
<b>Area Plan and Classification</b>	Kenai Area Plan (KAP) (adopted 2000, updated 2001), Region 7, Units 333A and 333B. Lands are currently classified Settlement, and Water Resources; proposed related actions will make necessary adjustments.
<b>Mineral Orders</b>	None. Project area will be closed to mineral entry prior to offering.
<b>Physical Characteristics</b>	
<b>Access</b>	The project area is accessible via highway vehicle from the Sterling Highway to Motor Way (ADL 232162, interim authorization status), and Alut Ave. Access within the project area will be via internal platted Rights-of-Way. LSS will continue to coordinate with landowners and applicants for the issuance of ADL 232162 and needed public dedication as well as another possible access along Norman Lowell Way.

**Attachment B: Area Data Summary Table**

for a Proposed Land Offering in the Kenai Peninsula Borough

Anchor Point Heights Subdivision – ADL 232197

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<b>Terrain and Major Features</b>	Elevation from ~160 feet to ~275 feet above sea level; flat, broad bench occupies much of the ~74 acres with west slopes very steep. Approximately 2/3 of the project area has wetlands, most of which will be retained by the state.
<b>View</b>	Portions at top of western bluff are situated for magnificent view across Cook Inlet and mountains and volcanoes to the west; scenery eastward takes in the local rolling hills of the Anchor River region.
<b>Climate</b>	Area falls within the gulf coast maritime climate zone, characterized by a rainy atmosphere, long, cold winters, and mild summers. July high 61°F, Jan low 19°F; annual rainfall 24.3 inches, snowfall 48 inches.
<b>Soils</b>	Soils within the project area generally consist of Qutal silt loam, Benka silt loam, Starichkof and Doroshin. Class III and IV agricultural soils are present. Known soil conditions will influence the project's design and feasibility and such features will be described in the project file and offering materials where relevant.
<b>Wetlands</b>	The majority of the over-all project area consists of muskeg/wetlands. Most of these areas will be retained in state ownership. Dredging or filling of wetlands may require a permit from the US Army Corps of Engineers. LSS recommends the majority of wetlands be included in the current land classification for water resources and use. See Retained Lands below.
<b>Vegetation</b>	Upland bench is nicely treed with mature white, Lutz, and black spruce, some birch and aspen, occasional willow, alder, and understory of local grass and bushes typical of the area. Approximately 2/3 of the 74-acre project area is large open area that is composed of tundra-like or wetland vegetation.
<b>Water Source</b>	Personal water wells or hauled water may be sources. Water quality is unknown.
<b>Anadromous Waters</b>	None within project area. Parcels will be platted at least 200 feet from Anchor River and will be located at an elevation well above the river. Some parcels in the northern portion of the project are approximately 200-feet from a tributary of the Anchor River.
<b>Local Management Information</b>	
<b>Fire Management Option</b>	The entire area is designated "Critical Protection". The proposed subdivision is within KPB Anchor Point Fire and Emergency Medical Service Area.
<b>Game Management Unit</b>	ADF&G game management unit 15C.
<b>Local Authority</b>	Kenai Peninsula Borough currently holds authority for planning, platting, taxes, and zoning for the project area
<b>Flood Zone</b>	The relevant Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map is Community Panel Number 020012 4325 A. This project area is in Zone D, areas of undetermined but possible flood hazard. Because all buildable portions are on uplands approximately 100' above the Anchor River, there is little practical risk from that source. USDA customized soil report stated that for all areas of buildable soils the frequency of flooding or ponding is none.

**Attachment B: Area Data Summary Table**

for a Proposed Land Offering in the Kenai Peninsula Borough

Anchor Point Heights Subdivision – ADL 232197

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<b>Utilities</b>	This area is currently served by Homer Electric Association (HEA) and powerlines run along the Sterling Highway.
<b>Waste Disposal</b>	All on-site waste water disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation.
<b>Setbacks, Reserved Areas, Easements, and Conditions</b>	
<b>Improvements</b>	Prior to construction of any structure, driveway, or waste disposal system, purchasers should contact the platting authority for any permits or for required setbacks from water bodies, steep slopes, lot lines, and easements.
<b>Building Setbacks</b>	DMLW may impose: <ul style="list-style-type: none"><li>• Local Option Zone (R-1) requires various setbacks or other similar vehicle allowed by the platting authority;</li><li>• a 50-foot development setback from wetland areas on lots directly abutting wetland areas as appropriate. The development setback, subject to platting authority compatibility, is to remain in its natural state to promote slope stability, drainage protection to wet areas and/or to protect viewsheds;</li><li>• a 50-foot development setback from the top of the bluff. See prior point for definition of development setback;</li><li>• a 200-foot building setback or comparable alternative from the Anchor River and its tributary;</li></ul>
<b>Public Access and Utility Easements</b>	Parcels may be subject to the following: <ul style="list-style-type: none"><li>• public access easement(s);</li><li>• utility easement;</li><li>• a 50-foot-wide section line easement on each side of surveyed or protracted section lines on State-owned land in accordance with <i>AS 19.10.010 Dedication of Land for Public Highways</i> and <i>11 AAC 51.025 Section-line Easements</i>; section-line easements may be vacated under <i>AS 19.30.410 Vacation of Rights-of-Way</i> and <i>11 AAC 51.065 Vacation of Easements</i> as part of the subdivision development;</li><li>• 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;</li><li>• additional reservations and/or restrictions required through the local platting authority; and</li><li>• a public access easement or dedicated ROW access, in association with easement ADL 232162, from the Sterling Hwy to Alut Ave.</li><li>• a public access easement(s) or dedicated ROW(s) from the Sterling Hwy to the south end of project with internal platted ROW(s). KPB platting authorities will have a separate public process for platting actions.</li></ul>

**Attachment B: Area Data Summary Table**

for a Proposed Land Offering in the Kenai Peninsula Borough

Anchor Point Heights Subdivision – ADL 232197

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<b>Retained Lands</b>	DNR will retain most of those lands that appear to be wetlands; LSS recommends they be included in the current classification of Water Resources and Uses (wa) to protect watershed quality. See also related actions with this project.
<b>Public or Navigable Water Bodies</b>	NONE. The Anchor River is located immediately south of the project area with an unnamed tributary just north of the project boundary. If any water bodies are deemed public or navigable within the project area prior to platting, DNR DMLW will comply with statutory requirements to provide access to and along said water bodies.
<b>Additional Information</b>	
<b>Native Regional Corporations</b>	Cook Inlet Region, Inc. (CIRI)
<b>Villages and Tribal Councils</b>	Native Villages of Ninilchik & Seldovia
<b>Oil and Gas Activity</b>	Active Oil and Gas Lease ADL 392497 and associated file number CI-0814 that includes the proposed project area within the more than 4,100 acres of the lease which has an expiration date of 11/30/2023.
<b>Mining Activity</b>	None known.
<b>Comments</b>	Nothing additional.

## ATTACHMENT C: PUBLIC NOTICE

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

#### PUBLIC NOTICE

Requesting Input for  
a Proposed Land Offering:  
**Anchor Point Heights Subdivision – ADL 232197**  
a Preliminary Decision and its Proposed Related Actions:  
Amendment to the Kenai Area Plan, Land Classification Order, Mineral Order (Closing)

#### **COMMENT PERIOD ENDS 5:00PM, TUESDAY, JANUARY 10, 2017**

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

Location: Approximately 3.5 miles southeast of Anchor Point and 10 miles northwest of Homer, northeast of the Sterling Hwy near MP 161

Project size: Approximately 25 acres proposed development area, up to 20 parcels sized from 40,000 square feet to less than 5 acres

To obtain the notice, Preliminary Decision, Mineral Order, Land Classification Order, Area Plan Amendment, 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 (TDD for the hearing impaired: 907.269.8411) or Fairbanks at 907.451.2705 (TDD for the hearing impaired: 907.451.2770), or the Southeast Land Office in Juneau at 907.465.3400 (TDD for the hearing impaired: 907.465.3888), 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, January 3, 2017.

Pursuant to AS 38.05.945 Notice, the public is invited to submit comment on the Preliminary Decision, Mineral Order, Land Classification Order, and Area Plan Amendment 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, TUESDAY JANUARY 10, 2017.** Only persons from whom DNR DMLW LSCAS receives timely, written comment during the identified comment period will be eligible to file a request for reconsideration for the Final Finding and Decision. Written comment may be received by fax, email or postal mail. To submit comments or for direct inquiries, contact DNR DMLW Land Sales Section, 550 W 7<sup>th</sup> Ave. Suite 640, Anchorage, AK 99501, fax # 907.269.8916, [land.development@alaska.gov](mailto:land.development@alaska.gov). If you have questions, contact John W. Thomas at 907.269.8591 or [john.thomas@alaska.gov](mailto:john.thomas@alaska.gov).

If no significant change is required, the preliminary decision, mineral order, land classification order, and area plan amendment, 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.

