

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

# PRELIMINARY DECISION

## **ADL 233121 Material Site**

## **ADL 233165 Federal Aviation Administration Material Sale**

Material Site Designation and Application for Negotiated Material Sale

AS 38.05.550-555

This Preliminary Decision (PD) is the initial determination on a proposed disposal of interest in state land and is subject to comments received during the agency and public notice period, which is being done concurrently. The public and the agencies to whom the notice will be sent are invited to comment on this PD. The deadline for commenting is **5:00 p.m. on August 20, 2018**. Please see the Comments section of this PD for details on how and where to send comments for consideration. Only the applicant and those who comment have the right to appeal the Final Finding and Decision (FFD).

### **Proposed Action:**

The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Regional Office (SCRO) has received a request from the Federal Aviation Administration (FAA) for a material sale contract, serialized as ADL 233165, to extract up to 60,000 cubic yards (cy) annually of beach cobbles and sand from the avulsed tide and submerged lands at the north beach of Middleton Island, in the Gulf of Alaska. The location of the proposed project area is further described as 12 acres within Sections 5, 6, and 8, Township 28 South, Range 6 West, Copper River Meridian.

FAA's request requires that the proposed material extraction location be designated as a material site, which was serialized as ADL 233121, as required by Alaska Statutes (AS) 38.05.550(b). This designation will allow for issuance of the requested material sale contract ADL 233165, and subsequent issuance of material sale contracts, under AS 38.05.550-565. DMLW is considering designating approximately 125 acres as the ADL 233121 material site, fulfilling the needs of current and future sales. In accordance with AS 38.04.065 and AS 38.05.300, state land must be classified for surface use in areas considered proper and necessary. The location of the requested site is not within the boundaries of an existing DNR area plan and therefore requires that the proposed material site be designated and classified through a Site-Specific Area Plan (SSAP).

### **Scope of Review:**

The scope of this PD is to determine if it is in the State's best interest to designate a material site, ADL 233121, and subsequently issue material sale contracts, including material sale contract ADL

233165 to FAA. Under AS 38.05.550, the scope of the administrative review is limited to the opening of a material site for the continuous sale and extraction of materials by purchasers until the site is closed by DMLW. Under AS 38.05.550(b), future contracts for the sale of material from the designated site may be issued without further finding or notice. Contracts for the sale of material may be issued by DMLW either by negotiated, competitive, limited, or public and charitable material sale methods. Contracts issued under AS 38.05.550-565 will be at the representative regional sales prices (RRSP) determined by the commissioner, or fair market value (FMV) determined by an independent appraisal, or at less than appraised FMV determined under AS 38.05.810(a). This PD also includes a proposed SSAP (Attachment C) and a proposed Land Classification Order (LCO) (Attachment D) since the site is currently unclassified state land.

**Authority:**

The material site, ADL 233121, is being adjudicated pursuant to AS 38.05.550 Disposal of Materials. The material sale ADL 233165 is being adjudicated pursuant to AS 38.05.555 Negotiated Sales of Materials. Other authority includes AS 38.04.065 Land Use Planning and Classification; AS 38.05.035(e) Powers and Duties of the Director; AS 38.05.300 Classification of Land; AS 38.05.810(a) Public and Charitable Use; AS 38.05.945 Public Notice; AS 27.19 Reclamation; and 11 AAC 05 Fees; 11 AAC 55 Land Planning and Classification; 11 AAC 71 Timber and Material Sales; and 11 AAC 97 Mining Reclamation. Under DNR Department Order 003, the SCRO Regional Manager has delegated authority to designate material sites under AS 38.05.550 and to negotiate material sales under AS 38.05.555. Authority to execute an SSAP and LCO has been delegated to the DMLW Director.

**Administrative Record:**

Material site ADL 233121 and material sale contract ADL 233165 constitute the administrative record in this case.

**Legal Description, Location, and Geographical Features:**

The state land where the proposed material site and material sale contract are located is described as follows:

- **Legal Description:** Sections 5, 6, and 8, Township 28 South, Range 6 West, Copper River Meridian
- **Geographical Location:** Avulsed tide and submerged lands at the north beach of Middleton Island, Gulf of Alaska
- **Approximate Latitude/Longitude:** 59.4691 N, 146.3052 W;  
59.4615 N, 146.2823 W
- **Area Geographical Features:** Cobble and sand berm, flat to slightly rolling upland terrain with minimal vegetation or ground cover
- **Existing surveys:** United States Survey (USS) No. 14453
- **Municipality/Borough:** None
- **Native Corporations/Federally Recognized Tribes:** Chugach Alaska Corporation

- **Site Size:** 125 acres, more or less
- **Sale Size:** 12 acres, more or less



**Title:**

Federal survey, USS No. 14453, completed in October 2014, shows the “fixed and limited boundary of avulsed tidelands” around Middleton Island, and “along the line of mean high tide prior to the 1964 earthquake.” Aerial photography of Middleton Island (as shown above) clearly shows “new” land at the north tip or north beach of Middleton Island, the location of the material site applied for by the FAA. The uplands of Middleton Island is not state-owned land.

The creation of new land by a sudden or rapid increase (such as an earthquake) beside a body of water by which an area of new land is formed is known as avulsion. This process does not change the legal boundary. When there is an avulsive change to a coastline, the original boundary remains fixed at the place where it was before the event. Under the Equal Footing Doctrine and the Submerged Lands Act of 1953, title to tidelands and submerged lands vests in the State of Alaska at statehood. Therefore, since the new or avulsed land was formerly tide and submerged land that became state land at statehood, the State of Alaska has title to the avulsed land at the north tip of Middleton Island that is seaward of the mean high tide line as it was prior to the 1964 earthquake.

A Title Report has been requested but was not available at the time of issuance of this PD. DMLW reserves the right to modify the FFD based upon information contained within the Title Report.

**Third Party Interests:**

There are no known third-party interests for the project site. Pursuant to 1984 Interim Conveyances 911 and 912, except for the excluded land as set forth in the conveyances, the Chugach Alaska Corporation (formerly Chugach Natives, Inc.) holds title to the surface estate and the subsurface estate of Middleton Island.

**Planning and Classification:**

Because the project area is not within a DNR area plan and is unclassified land, this PD includes a SSAP for the subject avulsed tide and submerged lands, and an associated LCO, No.SC-18-002. The SSAP and LCO propose to classify the ADL 233121 material site as "Material land," defined in DNR regulation 11 AAC 55.120.

**Traditional Use Findings:**

Because Middleton Island is located within an unorganized borough, AS 38.05.830 requires consideration of whether a disposal of state land, such as a material sale, may affect "population in the vicinity of the land, and potential for conflicts with the traditional uses of the land." A material sale is not expected to affect population or traditional uses since, except for FAA staff and visitors, the island is uninhabited. If traditional uses of the subject land become known through the agency and public notice process, they will be discussed in the FFD.

**Access:**

FAA will access the proposed material sale site via an existing road on Middleton Island. Access to the site for future sales will be determined on a case-by-case basis.

**Material Site Discussion, ADL 233121:**

In 2012, AS 38.05.550-565 were enacted and require a material site be designated prior to the sale or removal of materials. In April 2018, the FAA submitted an application for a material sale, ADL 233165. This PD includes a decision to designate a publicly available material site on Middleton Island, ADL 233121, a process initiated by FAA's application for a material sale on Middleton Island.

Designation of the 125-acre material site, ADL 233121, would allow issuance of the proposed material sale contract to FAA, and the material site would be available for other material sale contracts and limited material permit (LMP) applications. The public or private sector may submit applications to extract material from the site. Two hundred cy or less may be requested with a LMP application and more than 200 cy may be requested with a material sale contract application. In accordance with AS 38.05.550(d), material may be sold from the site at RRSP, FMV, or less than FMV (public and charitable rate).

**Material Sale Discussion, ADL 233165:**

On April 13, 2018, the FAA applied for a material sale contract, serialized as ADL 233165, to extract 20,000 cy per month, or up to 60,000 cy per year, of 4 to 6-inch round beach cobbles mixed with sand, over a ten-year period from the north beach of Middleton Island. The north beach is the avulsed land as described in the Title section of this PD. Included with the FAA's application was a Development Plan (DP); an updated DP was submitted on June 8, 2018 (Attachment A). FAA's DP describes the project area as having very little vegetation and a scarcity of plants and animals, including few birds observed in the area.

According to the DP, the FAA plans to remove the cobbles and sand from a berm above the high tide mark that is deposited on the beach during storms. The material removed will be replaced by new cobbles and sand that is washed up by subsequent storms. The cobbles and sand will be excavated by front end loaders, transported using dump trucks, and taken to private uplands for processing in a rock crusher to create gravel. The extracted material will be removed from the material site and stored at the FAA gravel pit or on the inactive crosswind runway.

The material will be used to construct and maintain FAA facilities, including an airport and airstrip, on Middleton Island. As described in their DP, the FAA (formerly the Civilian Aeronautics Administration) facilities on Middleton Island have provided assistance to aid air travel since the 1940s. FAA facilities include air traffic control long-range radar, air to ground radios for communication with enroute air traffic, a VHF Omnidirectional Range (VOR) navigation aid, and weather radar. Additionally, the airport is used to transport FAA staff, as well as scientists and visitors, to the island. Because there is no dock on Middleton Island and rough seas, travel to the island other than by air is impractical and unreliable.

To date, FAA has not determined which contractor will develop the material site. Once a contractor has been secured, the contractor must submit, for review and approval, a site specific operating plan and site diagram. The contractor must comply with all requirements of the proposed material sale contract issued to FAA. The scope of the project is unknown until the contractor is selected but any activities that occur beyond the physical extraction of the material may require additional authorizations. FAA applied for and was granted a land use permit, LAS 32244, under AS 38.05.850, for a temporary barge landing site on Middleton Island to load and unload supplies associated with the proposed material sale contract.

Compliance with the terms of the material sale contract may be assessed annually. Accounting and payment for material removed will be required by the end of each calendar year the contract is in effect. A completion report detailing events over the course of the contract term will be required upon expiration or termination of the material sale contract.

**Development Plan:**

The FAA's DP and Material Site Reclamation Plan (Attachment B) are under consideration by SCRO. Should the proposed material sale contract be granted, it is anticipated the DP may need to

be updated throughout the life of the contract as activities are added or subtracted. The contractor for FAA must submit and receive approval of the DP for the site. All updates must be approved, in writing, by SCRO before any construction, deconstruction, placement of infrastructure, or change in activity will be permitted. SCRO reserves the right to require additional agency review and/or public notice for changes that are deemed by SCRO to be beyond the scope of this decision.

**Hazardous Materials and Potential Contaminants:**

According to the Environmental Risk Questionnaire the FAA submitted with their application, there are no known environmental contaminants within the considered material site. FAA has no plans to store fuel at the material site; all vehicle fueling and maintenance will occur outside the material site.

Adherence to standard material sale contract operating requirements will minimize the risk of leaks or spills. FAA is expected to follow the Department of Environmental Conservation's (DEC) Best Management Practices for Gravel/Rock Aggregate Extraction Projects, and must adhere to all DEC environmental regulations.

FAA is expected to inspect the material site and familiarize itself with the condition and quality of the land. 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 proposed for this material site designation and material extraction. The State of Alaska does not assume liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances ever be identified.

**Performance Guaranty (Bonding) and Insurance:**

As FAA is a federal agency that is self-insured and bonded, and as the federal government guarantees compliance through statutes and regulations, no performance guarantee or insurance will be required.

**Survey:**

The State of Alaska reserves the right to require a survey of the material site or sale. A survey is not being required at this time.

**Compensation:**

As a federal agency under AS 38.05.810(a), and since the materials to be removed are to be used for a public purpose to assist with air traffic and weather monitoring, materials will be sold to the FAA in accordance with AS 38.05.555(b)(3) at less than appraised value under AS 38.05.810(a). In accordance with 11 AAC 05.130(e)(1) and (2), the sale of materials to a federal agency for use in constructing, reconstructing or maintaining a public project is no charge for the first 5,000 cy of materials used each year, and for each cy beyond 5,000 cy, the 2018 price schedule for public and charitable material sale contracts under AS 38.05.810(a) is \$0.50 per cy beyond 5,000 cy per

year. Based on the FAA's proposed annual removal of 60,000 cy of material, anticipated annual revenue under the material sale contract is \$27,500.

FAA must submit payment and accounting for material removed at the end of each calendar year. No deposit is required for a public and charitable material sale contract.

**Reclamation:**

Under AS 27.19, Reclamation, a "mining operation" is defined to include extraction of "other materials or of a sand or gravel deposit." In accordance with AS 27.19.020, Reclamation standard, "a mining operation shall be conducted in a manner that prevents unnecessary and undue degradation of land and water resources, and the mining operation shall be reclaimed as contemporaneously as practicable to leave the site in a stable condition." If executed, the material sale contract shall include an approved reclamation plan.

Once FAA has secured a contractor, a final reclamation plan will be provided to DMLW for review and approval. FAA anticipates reclaiming mining areas by filling in test pits and the deepest excavation pits; contour extraction areas to blend in with the surrounding terrain; and reclaim access road(s) to the site by contouring material to blend in with the surrounding terrain. FAA notes the material site does not have topsoil and has minimal ground cover vegetation, and so no restoration of topsoil or vegetation is planned for the material extraction site.

**Public Notice of the Preliminary Decision:**

Pursuant to AS 38.05.945, this PD, the proposed Site-Specific Area Plan (Attachment C), and the proposed Land Classification Order (Attachment D) will be advertised for a 30-day agency and public comment period, which is being done concurrently. Notice will be posted on the State of Alaska Online Public Notice System at <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx>, and the post offices in Cordova, Valdez, Tatitlek, and Chenega Bay.

The following agencies will be provided a copy of this PD for review and comment:

- DNR DMLW Mining
- DNR DMLW Water Resources
- DNR DMLW Realty Services Section
- DNR DMLW Resource Assessment & Development Section
- DNR DMLW Contract Administration
- DNR Office of History and Archaeology/State Historic Preservation Office
- DNR Division of Oil and Gas & State Pipeline Coordinator
- DNR Division of Parks and Outdoor Recreation
- Alaska Department of Fish and Game – Habitat
- Alaska Department of Fish and Game – Wildlife Conservation
- Alaska Department of Environment Conservation
- Alaska Department of Transportation and Public Facilities

- Alaska Department of Commerce, Community, and Economic Development
- National Oceanic and Atmospheric Administration
- U.S. Army Corps of Engineers
- U.S. Coast Guard
- U.S. Environmental Protection Agency
- U.S. Fish and Wildlife Service
- National Park Service

**Comments:**

This PD, the proposed SSAP, and the proposed LCO are subject to both public and agency comments, and all comments received by the comment deadline will be addressed in the FFD. Only those who comment and the applicant have the right to appeal the FFD. A copy of the FFD will be sent to any person who comments on the PD, which will include an explanation of the appeal process.

**Written comments must be received in this office no later than**

**5:00 p.m. on August 20, 2018 to be considered.**

To submit written comments, please choose one of the following methods:

Postal: Department of Natural Resources  
Division of Mining, Land and Water  
Southcentral Regional Office  
ATTN: Linda Mueller  
550 West 7<sup>th</sup> Avenue, Suite 900C  
Anchorage, AK 99501-3577

Email: [linda.mueller@alaska.gov](mailto:linda.mueller@alaska.gov)

Fax: (907) 269-8913

Questions regarding the proposed material site designation or material sale can be directed to Linda Mueller at (907) 269-8111. If public comments result in significant changes to this PD, additional public notice will be given. To be eligible to appeal the FFD, a person must provide written comments during the PD comment period as per AS 38.05.035(i)-(m). A copy of the FFD will be sent to any person who comments on the PD, which will include an explanation of the appeal process.

**Recommendation:**

DMLW has completed a review of the information provided by the applicant and found this project is consistent with the relevant land management documents and all applicable statutes and regulations. DMLW considered three criteria to determine if this project is in the best interest of the State and the development of its natural resources. These include direct economic benefit to



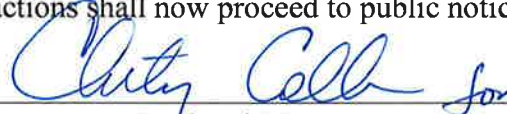
the State, indirect economic benefit to the State, and encouragement of the development of the State's resources. The direct economic benefit realized by the State is collection of fees from FAA for the proposed material sale contract, and collection of fees from potential future material sale contracts. The proposed project presents an indirect economic benefit to the State and promotes development of State resources by enabling FAA to remove material from state land that will be used to maintain FAA facilities on Middleton Island which aids air traffic and weather monitoring. As there are no competing projects that are incompatible with material site designation ADL 233121 or material sale contract ADL 233165, and in consideration of the benefits described above, DMLW finds that designating the material site and authorizing a material sale contract to FAA provides the greatest benefits to the State. It is further recommended that the project area be classified in accordance with the attached SSAP and LCO. I find these proposed actions may be in the State's best interest and recommend approval to proceed with public notice.


  
Linda Mueller, Natural Resource Specialist III

  
Date

**Preliminary Decision:**

It is the determination of DMLW that it may be in the State's best interest to designate material site ADL 233121, classify the state land at the material site, and issue material sale contract ADL 233165 to FAA, subject to the conditions described in this document, operating requirements, and standard contract terms, without bond. In accordance with AS 38.05.555, a material sale contract may be issued for not more than five years. FAA will pay \$0.50 per cy if more than 5,000 cy of material is extracted per year. With a proposed annual extraction of 60,000 cy of material, anticipated annual revenue is \$27,500 each year of the contract. This application and associated actions shall now proceed to public notice.

  
Clark Cox, Regional Manager  
Southcentral Regional Office, Division of Mining, Land and Water

  
Date

**Attachments:**

- Attachment A - Development Plan Narrative
- Attachment B - Material Site Reclamation Plan
- Attachment C - Proposed Site-Specific Area Plan
- Attachment D - Proposed Land Classification Order
- Attachment E - Middleton Island Project Area



## **Attachment A**

### **Development Plan Narrative**

**Purpose and Need:** The Civilian Aeronautics Administration and its successor, the FAA, have used Middleton Island since the early 1940s to aid air travel. Some of the equipment on Middleton Island includes air traffic control long-range radar, air to ground radios for communication with enroute air traffic, a VHF Omnidirectional Range (VOR) navigation aid, and weather radar. The FAA continuously staffs remote Middleton Island to maintain FAA facilities on the island.

Charter aircraft from the Kenai Airport routinely provide transportation for FAA personnel to Middleton Island. Other visitors to the island also typically travel by air, including a group of scientists who travel to the island annually to study birds. Middleton Island does not have a dock, and the rough seas for much of the year, which make travel to the island by sea impractical and unreliable.

It has been twenty years since a maintenance project on the runway was completed. Since that project, the runway has been graded and compacted by FAA staff regularly, but the effects of time and weather have slowly degraded the runway surface.

A material site on Middleton Island is required in order to provide aggregate for Federal Aviation Administration (FAA) projects on the island. Since there is no dock on the island, importing gravel in sufficient quantities for the proposed projects is cost prohibitive. In the near future, the FAA intends to complete projects rehabilitating the island runway, constructing two building pads and constructing a new Runway Safety Area (RSA). Additionally, a stockpile of gravel will be established for as-needed repairs to the island roads and runway.

**Material Source and Execution:** The material source identified for Middleton Island is on land along the north shore. This source consists of a berm of cobbles and sand that is above the high tide mark and is deposited on the beach during storms. On the land side of the berm is an area that is relatively flat which also consists of cobbles and sand. There is very little vegetation or animals, and some accumulation of the ocean debris, such as bottles, waste plastic and driftwood, in this area. Although the island is home to a large number of birds, there are few birds observed along the north shore, probably because of the scarcity of plants and animals. Annually a gap in the berm is created using heavy equipment to allow for landing craft and barges to resupply the island. After each storm, any gap created in the berm is closed by new cobbles and sand washed up by the storm.

Material will be harvested from the berm to be processed in a rock crusher to create gravel for projects. The cobbles and sand will be collected by front end loaders, transferred to dump trucks and then carried to the rock crusher for processing. It is expected that the material gathered from the material site will be replaced during storms.

**Legal Description:** n/a

**Terrain/ground cover:** slightly rolling terrain with minimal ground cover.

**Access:** Access via existing road in pickups and construction vehicles. The existing road to the barge landing will be temporarily extended along the beach to collect gravel and sand. This road extension

## **Attachment A**

### **Development Plan Narrative**

may be approximately 2 miles long. The typical vehicles will be pickups, loaders, dump trucks and miscellaneous construction vehicles.

**Buildings and other structures:** none

**Power Source:** No existing power at the material site

**Waste types, waste sources, and disposal methods:** No waste is expected to be generated. There are no trees, bushes or structures to be removed.

**Hazard substances:** none – all fueling and maintenance of vehicles will occur outside of the material site.

**Water supply:** Any water necessary will be brought from the FAA facility to the south of the airport approximately 2 miles away. A portable toilet (porta potty) may be placed on the site, and will be emptied at the FAA facility two miles south.

**Parking areas and storage areas:** Excavation equipment will be parked at the material site overnight. Excavated material will be stored away from the material site at the FAA gravel pit or on the inactive crosswind runway. Parked equipment will have trays and pads placed under them to collect leaking fluids.

**Number of people using the site:** ten to twenty depending on contractor's work crew size. The supervisor to staff ratio will be at least 1:5 to as high as 1:10

**Maintenance and operations:** Maintenance of the access road to the material site will be maintained by the contractor and FAA staff. Routine grading and some additional material may be placed on the access road to improve transit.

**Closure/reclamation plan:** A reclamation plan for the material site is being submitted at the same time as this development plan. The reclamation will occur in September 2018 and will consist of backfilling deeper excavations, contouring the area to match the existing terrain and obliterating the access road on State land.

## **Attachment B**

### **Material Site Reclamation Plan**

#### **Material Site Reclamation Plan – Additional Information**

April 2, 2018

**Item:**

**4.b.)** List of equipment (type and quantity) to be used during the reclamation operation:

One Bulldozer, one excavator, two dump trucks, one grader – as necessary

**4.c.)** A time schedule of reclamation measures shall be included as part of the plan. The material site does not have topsoil and has minimal ground cover vegetation. No restoration of topsoil or vegetation is planned for this material site

September 1, 2018 to September 30, 2018 – exact dates are subject to field conditions

1<sup>st</sup> phase (5 days) – fill in test pits and deepest excavation pits

2<sup>nd</sup> phase (5 days) – contour excavation areas to blend in with surrounding terrain

3<sup>rd</sup> phase (2 days) – obliterate access road(s) by contouring material to blend into surrounding terrain

**Attachment C**  
**DRAFT Site-Specific Area Plan**

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

**DRAFT Site-Specific Area Plan for ADL 233121 – Middleton Island**

**Introduction:**

The Federal Aviation Administration (FAA) has applied to the Department of Natural Resources (DNR), Division of Mining, Land & Water (DMLW), Southcentral Regional Office (SCRO) for a material sale (ADL 233165) to remove beach sand and cobbles from state-owned avulsed tide and submerged lands at the north beach of Middleton Island. FAA's material sale application generated the requirement under Alaska Statute (AS) 38.05.550 to designate the material sale area as a material site (ADL 233121). Because the subject land is currently unclassified, the material site must be designated and classified so that a material sale may proceed.

SCRO is considering the issuance of the ADL 233165 material sale contract to the FAA to maintain its facilities, including an airstrip, on Middleton Island. The proposed material sale contract is to authorize the annual removal of up to 60,000 cubic yards (cy) of material from the avulsed tide and submerged lands at the north beach of Middleton Island, and located in Sections 5, 6, and 8 in Township 28 South, Range 6 West, Copper River Meridian.

If approved, SCRO would issue material sale contracts authorizing the removal of material from the proposed material site. Prior to removal or disposal of materials, and issuance of a material sale contract, under AS 38.05.550(b), the project area must be designated as a material site. Additionally, under AS 38.04.065(b) and (h), and AS 38.05.300, because the proposed material site (ADL 233121) is not within a DNR area plan and is unclassified state land, therefore, in conjunction with this Preliminary Decision (PD), DMLW has developed this Site-Specific Area Plan (SSAP) and Land Classification Order (LCO) for the material site.

The public and agencies are invited to comment on the PD, this SSAP, and the LCO. The deadline for comments to be received is **August 20, 2018**. Refer to the "Public Notice of the Preliminary Decision" and "Comments" sections in the PD for details on how, when, and where to submit written comments.

**Authority:**

The proposed SSAP and LCO have been developed pursuant to AS 38.04.065, Land Use Planning and Classification, and AS 38.05.300, Classification of Land, and 11 AAC 55.120 Material Land.

The authority to execute the SSAP and LCO has been delegated to the Director of the Division of Mining, Land & Water.

**Location:**

Middleton Island is approximately 2,200 acres, excluding the avulsed lands resulting from the 1964 earthquake. The site is located on the avulsed tide and submerged lands at the north beach of Middleton Island; 59.4691 N, 146.3052 W; 59.4615 N, 146.2823 W. See Attachment E.

## **Attachment C**

### **DRAFT Site-Specific Area Plan**

#### **Legal Description:**

The site is located within Sections 5, 6, and 8, Township 28 South, Range 6 West, Copper River Meridian, containing 125 acres, more or less.

#### **Access:**

Currently, there is no dock at Middleton Island, and, because of the surrounding rough seas, the most reliable access to the island is by air. The site may be accessed by an existing road on Middleton Island or by boat or by an authorized barge landing site.

#### **Title:**

The State of Alaska holds title to the subject tide and submerged lands under the Equal Footing Doctrine and the Submerged Lands Act of 1953. When Alaska was admitted to the Union on January 3, 1959, the State acquired title to land beneath inland navigable waters, land beneath periodically or permanently covered by tidal waters up to the line of mean high tide, and submerged lands extending three miles seaward of the coast. Section 6(m) of the Alaska Statehood Act states “the Submerged Lands Act of 1953 shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder.”

Federal survey, USS No. 14453, completed in October 2014, shows the “fixed and limited boundary of avulsed tidelands” around Middleton Island, and “along the line of mean high tide prior to the 1964 earthquake.” Aerial photography of Middleton Island (as shown in Attachment E) clearly shows “new” land at the north beach of Middleton Island.

The creation of new land by a sudden or rapid increase (such as an earthquake) beside a body of water by which an area of new land is formed is known as avulsion. This process does not change the legal boundary. When there is an avulsive change to a coastline, the original boundary remains fixed at the place where it was before the event. Since the new or avulsed land was formerly state-owned tide and submerged land, the State of Alaska has title to the avulsed land that is seaward of the mean high tide line as it was prior to the 1964 earthquake.

#### **Adjacent Landowners, Native Corporations or Borough:**

Middleton Island does not have a resident population. The site is adjacent to private uplands that are owned by the Chugach Alaska Corporation, the ANCSA regional corporation. The site is not within an organized borough.

Although Middleton Island is part of the federal Alaska Maritime National Wildlife Refuge, the avulsed tidelands and the site are not part of the refuge. The National Park Service designated Middleton Island a Registered Natural Landmark for its geological history.

#### **Mineral Orders, Local Planning, Third Party Interests, or Conflicts:**

There are no existing mineral orders associated with this location, and none are anticipated at this time. There has been no prior DNR planning related to this site. There are no known third-party interests or conflicts for the site.

#### **Unauthorized Use/Trespass:**

There is no record of unauthorized uses or trespass on this site at this time.

**Attachment C**  
**DRAFT Site-Specific Area Plan**

**Resource Values/Land Use:**

Topography/Soils: The site is avulsed tide and submerged land at the north beach of Middleton Island. Middleton Island is low-lying and unforested, with upland grasslands, and low-sloping or level gravel and sandy beaches.

Subsistence: Middleton Island is located within the Alaska Department of Fish and Game's (ADF&G) Game Management Unit 6D; however, there are no known subsistence uses at the site. As defined in ADF&G statute AS 16.05.940(33), subsistence use is "the noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption."

Wildlife: European hares were introduced on the island in the 1940s-1950s. Middleton Island is home to a variety of shorebirds and seabirds, including Black Oystercatchers, Black-legged Kittiwakes, Pelagic Cormorants, Common Murre, Thick-billed Murre, Rhinoceros Auklet, Glucous-winged Gulls, and Canada Geese, and is a stopover site for migrating birds.

Fisheries: Middleton Island is in the northern Gulf of Alaska, approximately 50 miles south of Prince William Sound. There are currently no known subsistence or commercial fisheries at Middleton Island.

Heritage Resources: Historically, Chugach Native people visited or resided on Middleton Island. Currently, there are no known cultural resources identified in this project area. If any cultural resources are identified through the agency and public notice process of the PD, they will be addressed in the final decision for this project.

Vegetation: The site consists of avulsed tide and submerged land with some vegetation.

Access: The site may be accessed by an existing road on Middleton Island, by boat, or by an authorized barge landing site.

Prior Use: The site has no prior usage.

Planned and Projected Future Uses: Material sales on approximately 125 acres of state-owned avulsed tide and submerged lands to support FAA facility and runway maintenance. The projected future use is consistent with the planned use, material sales to support FAA facilities and runway maintenance.

Adjacent Land Use: The uplands adjacent to the site have no structures or current uses. Other areas of uplands contain FAA structures and airstrip.

Mineral Entry: There is no current mineral entry on the site.

Classification: The site is not part of an existing DNR area plan and is not classified. The proposed recommendation is to classify the site as Material Land.

**Attachment C**  
**DRAFT Site-Specific Area Plan**

Issue Identification: There are no known major issues for the site at this time.

Alternatives: There are only two alternatives to this decision. The first option is to not allow the material sale and not classify the lands through rejection of the SSAP and LCO. The second option is to approve the FAA's application, or allow for future material sale applications, and classify the land as "Material Land."

The first option would deny the FAA the ability to extract the materials necessary to maintain their facilities and runway.

Classifying the land as "Material Land" is the most appropriate option because it will allow the FAA to remove material necessary to the maintenance of its upland facilities on Middleton Island, and allow future applicants to extract material from the site.

**Recommendations:**

Management Intent: The Management Intent is to allow material sites and sales from state-owned avulsed tide and submerged lands at the north point of Middleton Island. Classifying the subject area will allow for material sales and will allow the FAA and future applicants to extract materials from the area. The intent is to retain the land in state ownership.

A "material land" classification is "land that is suitable for the extraction of common varieties of sand, gravel, stone, peat, clay, and other similar materials." (11 AAC 55.120.)

DMLW recommends that the land be classified as Material Land in both the SSAP and LCO. Per 11 AAC 55.120 land classified Material Land is "land that is suitable for the extraction of common varieties of sand, gravel, stone, peat, clay, and other similar materials." This classification is appropriate for the proposed use of the land and DMLW's proposed designation as a material site under AS 38.05.550(b). Classifying the site as Material Land will not negatively impact the surrounding area. A draft LCO, SC-18-002, is attached as Attachment D.

Management Guidelines: Under the proposed classification, "Material Land," the subject area will be available for material sales and will allow the FAA and future applicants to extract materials from the state-owned avulsed tide and submerged lands at the north tip of Middleton Island.

The proposed material site and sale would be located on state land that is currently not classified. Per 11 AAC 55.040(i), "until land has been classified, a disposal or transfer of state land or an interest in state land, including timber and materials, will not be allowed except for" specific types of authorizations outlined in the regulation. The proposed material site designation does not meet any of the regulation's exceptions and therefore must be classified.

**Preliminary Recommendations:** DMLW recommends that the land be classified Material Land in both the SSAP and the LCO. Per 11 AAC 55.120, land classified as Material Land is suitable for the extraction of common varieties of sand, gravel, stone, peat, clay, and other materials. This classification is appropriate for the proposed use of the land and authorization by DMLW.

It is in the best interest of the state to adopt this SSAP and the associated LCO. DNR has evaluated the available alternatives for this action and has determined that the proposed actions are in the



**Attachment C**  
**DRAFT Site-Specific Area Plan**

best interest of the state and is hereby approved to proceed to public noticing pursuant to AS 38.05.945.

The requirements of AS 38.04.065(b), Land Use Planning and Classification, and its associated regulations in 11 AAC 55, have been considered and the proposed action is found to be consistent with these applicable laws. The proposed classification is the site's primary use; however, this classification includes the management intent of multiple use as per 11 AAC 55.010. It is anticipated that the proposed SSAP and classification will not negatively impact current or future uses in the area.

**Public Notice of the SSAP and LCO:**

Pursuant to AS 38.05.945(a)(1), DNR will give notice of classification of state land under AS 38.05.300.

Agency and public notice is being done concurrently for the above PD for the proposed FAA material sale (ADL 233165) and material site designation (ADL 233121), and the SSAP and LCO. The public and the agencies listed in the PD are invited to comment on each separate action: the PD for issuance of the material sale contract to FAA and designation of the material site, and this SSAP and LCO for the proposed land classification for the site. See the "Public Notice of the Preliminary Decision" and "Comments" sections in the above PD for the deadline to submit written comments and how to submit written comments.

**Recommended by:**

**D R A F T**

\_\_\_\_\_  
Linda Mueller, Natural Resource Specialist III

\_\_\_\_\_  
Date

**D R A F T**

\_\_\_\_\_  
Clark Cox, Southcentral Regional Manager

\_\_\_\_\_  
Date

**Approved by:**

**D R A F T**

\_\_\_\_\_  
Brent Goodrum, Director  
Division of Mining, Land & Water

\_\_\_\_\_  
Date

**Attachment D**  
**DRAFT Land Classification Order**

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

**DRAFT LAND CLASSIFICATION ORDER**  
**NO. SC-18-002**

I. Name: Middleton Island

II. The classification in Part III is based on written justification contained within the accompanying documents:

a. Preliminary Decision, dated \_\_\_\_\_.

b. Site-Specific Area Plan, dated \_\_\_\_\_.

III. Classification

<b>Legal Description</b>	<b>Acreage</b>	<b>Acquisition Authority</b>	<b>Existing Classification</b>	<b>Classification This Action</b>
Copper River Meridian, Township 28 South, Range 6 West, Sections 5, 6, and 8.  See Attachment E	125	Equal Footing Doctrine and Submerged Lands Act of 1953	None	Material Land

IV. This order is issued under the authority granted by AS 38.04.065 and AS 38.05.300 to the Commissioner of the Department of Natural Resources. and delegated to the Director of the Division of Mining, Land and Water. The above described lands are hereby designated and classified as indicated. Nothing shall prevent the reclassification of these lands if warranted in the public interest.

Approved by:

**D R A F T**

\_\_\_\_\_  
Brent Goodrum, Director, Division of Mining, Land & Water

\_\_\_\_\_  
Date

**Attachment E**  
**Proposed Material Site**

