

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

FINAL FINDING AND DECISION

of a
Land Offering in the Kenai Peninsula Borough
Fritz Creek Heights Subdivision – ADL 232826
AS 38.05.035(e), AS 38.05.045

and its
RELATED ACTION:
Mineral Order 1229 (Closing)
AS 38.05.185 and AS 38.05.300

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) dated January 24, 2020. The PD (attached) and related action has had the required public review.

I. Recommended Action(s)

The State of Alaska, Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Land Sales Section (LSS) recommends offering for sale State-owned land for private ownership within the Fritz Creek Heights Subdivision project area (ADL 232826), as described in the PD. Surveyed parcels will be offered for future sale by a method under *AS 38.05.045 Generally*.

For the purposes of providing land for settlement in the Fritz Creek Heights Subdivision project area, DNR may develop a subdivision of no more than 6 parcels. This 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. The project may be subdivided and offered in multiple stages.

There is one related action with this proposal:

Mineral Order: DNR DMLW proposes to close the project area to new mineral entry through Mineral Order (MO) 1229.

Public notice for these related actions was conducted concurrently with the notice for the primary action's PD.

II. Authority

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

Final Finding and Decision

Fritz Creek Heights Subdivision – ADL 232826

Page 2 of 4

use consistent with the public interest.” In addition, if it is deemed appropriate, DNR has the authority to develop and offer parcels larger than 5 acres under the allowances listed in AS 38.04.020 (h) *Land Disposal Bank*.

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

III. Public Participation and Input

All State requirements for public notice and public comment input have been met as covered in detail in **Section V. Summary of Public Notice and Comments**. Further information may lead to alterations of design of this project within the parameters set forth through this decision. Should this project move forward with State approval, final subdivision design and survey will be completed by an Alaska licensed surveyor. The surveyor will submit a platting application including a preliminary plat to the local platting authority prior to survey. This process will be subject to KPB ordinances and codes. During the process the public will have opportunity at the local level to provide additional comment and feedback prior to final establishment of lot corners and monuments.

Subdivision design will be submitted to the KPB platting authority for review in accordance with [Title 20 *Subdivisions*] of their ordinance.

Section 20.25.090 *Notice* provides the requirements for notification of affected property owners,

[Section 20.25.100 *Approval – Commission Authority – Notification Required* provides, in part, that “Within 60 days from the date of acceptance by the planning director of the preliminary plat, the commission shall determine if the preliminary plat complies with the provisions of law and this chapter, and shall approve, conditionally approve, or disapprove the plat..”

IV. Traditional Use Findings

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

V. Summary of Public Notice and Comments

Pursuant to AS 38.05.945 *Notice*, public notice inviting comment appeared on the State of Alaska Online Public Notices website at <https://aws.state.ak.us/OnlinePublicNotices/> and was posted on the DNR DMLW LSS website at http://dnr.alaska.gov/mlw/landsale/public_notice/ for the entire public notice period.

Notification and decision copies were sent directly to area state legislators and to multiple state agencies. Public notice was sent to other interested entities including landowners in the vicinity of the offering; additionally, parties were notified via the DNR Land Sales subscribers lists by email. Information was also posted to Twitter and Facebook. Notices were mailed to the KPB per AS 38.05.945(c)(1), as well as Cook Inlet Regional Corporation per AS 38.05.945(c)(2)-(3). Additionally, notices and a request to post were sent to postmasters and librarians in the vicinity of the offering.

Final Finding and Decision

Fritz Creek Heights Subdivision – ADL 232826

Page 3 of 4

The public notice stated that written comments were to be received by 5:00PM, March 4, 2020 in order to ensure consideration and eligibility to appeal. For more information, refer to the PD.

DNR DMLW LSS received a brief response of no comment from The Department of Transportation and Public Facilities, and comments from one private individual. Comments received during the public comment period are summarized below.

Individual Comment: The commenter was informing DNR about water quality issues (high arsenic levels) in the area. He noted that water in the adjacent property was tested at 190 ppb of arsenic, and another neighboring property well tested even higher. He recommended that DNR inform potential purchasers of this water quality issue and the need to plan for alternative water supply options.

DNR DMLW LSS Response: Thank you for the provided information. We will include the information in the Land Sale Offering Materials.

VI. Modifications to Decision and/or Additional Information

The recommended action has not been modified from the original proposed action described in the Preliminary Decision.

Recommendation and Approval of the Final Finding and Decision follow.

Final Finding and Decision

Fritz Creek Heights Subdivision – ADL 232826

Page 4 of 4

VII. Final Finding and Decision

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

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

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

[signature on file]

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

04/15/2020

Date

[signature on file]

Approved by: Martin W. Parsons
Director
Division of Mining, Land, and Water
Department of Natural Resources
State of Alaska

04/22/2020

Date

Approved by: Corri A. Feige

Commissioner
Department of Natural Resources
State of Alaska

Date

Reconsideration Provision

A person affected by this decision who provided timely written comment or public hearing testimony on the preliminary decision may request reconsideration, in accordance with *11 AAC 02*. Any reconsideration request must be received within 20 calendar days after the date of "issuance" of this decision, as defined in *11 AAC 02.040(c) and (d)* and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Ave., Ste. 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. Under *11 AAC 02.030*, appeals and requests for reconsideration filed under *11 AAC 02* must be accompanied by the fee established in *11 AAC 05.160(d)(1)(F)*, which has been set at \$200 under the provisions of *11 AAC 05.160 (a) and (b)*.

If reconsideration is not requested by that date or if the commissioner does not order reconsideration on their own motion, this decision goes into effect as a final order and decision on the 31st calendar day after the date of issuance. Failure of the commissioner to act on a request for reconsideration within 30 calendar days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request reconsideration of this decision in accordance with *11 AAC 02* before appealing this decision to Superior Court. A copy of *11 AAC 02* may be obtained from any regional information office of the Department of Natural Resources.