

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

PRELIMINARY DECISION
Square Island Subdivision – ADL 109029

Proposed Land Offering in the Ketchikan Gateway Borough
AS 38.05.035(e), AS 38.05.045

RELATED ACTIONS:
Proposed Amendment to the Central/Southern Southeast 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, OCTOBER 27, 2020

I. Proposed Action(s)

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Attachment A: Vicinity Map

Attachment B: Public Notice

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

Draft Amendment to the Central/Southern Southeast Area Plan SE-00-001A08

Draft Land Classification Order CL SE-00-001A08

Draft Mineral Order (Closing) MO No. 1234

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

LCS proposes to sell land within the Square Island project area for the purpose of providing land for settlement by developing a subdivision of no more than 40 parcels no smaller than one acre. The project area consists of approximately 336 acres with 150 acres identified for disposal by this proposed action. 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 (FFD), if the project proceeds to that step. Additional adjustments may be made prior to survey/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. Although actions under this proposal are limited to the stated maximums, additional offerings may be authorized under future proposals, which could increase the density of privately-owned parcels within, adjacent to, or near the project area.

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Proposed Related Action(s): These related actions will be developed separately, however; public notice is being conducted concurrently.

Area Plan Amendment: DNR proposes to amend the Central/Southern Southeast Area Plan (CSSEAP adopted 2000) to change the designation of Unit C-02 from General Use to Settlement and Settlement Commercial. Management intent will be changed to state that residential and commercial recreational uses are appropriate during the planning period. Refer to the Planning and Classification subsection of this document for more information on this proposed related action.

Land Classification Order: In relation to the Area Plan Amendment, DNR proposes to reclassify the project area in a Land Classification Order from General Use to Settlement land. Refer to the Planning and Classification subsection of this document for more information on this proposed related action.

Mineral Order (Closing): DNR proposes to close the project area to new mineral entry. No mining claims have been identified within the project area. Refer to the Mineral Activity and Order(s) subsection of this document for more information on this proposed related action.

These related actions will be developed separately. However, approval of the proposed actions is dependent upon one another in that one action will not proceed without approval of all actions.

Public Notice of Proposal: In accordance with *AS 38.05.945 Notice*, during a period of at least 30 consecutive days, the public will have the opportunity to submit written comment on this proposal. Public notice for all actions is being conducted concurrently.

Public Meeting: LCS will be holding a Public Meeting to discuss the proposal and share information about the project area. The Public Meeting will be held from 5 p.m. – 7 p.m. on Thursday, October 1, 2020 at The Landing Hotel (3434 Tongass Avenue Ketchikan, Alaska 99901) in the banquet room adjacent to Jeremiah's lounge. Use of face masks or face coverings is strongly encouraged for in-person attendees.

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

II. Method of Sale

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

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

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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." Pursuant to *AS 38.05.055 Auction Sale or Sealed Bid Procedures*, bidders for commercial land are not required to have been an Alaska resident for one year preceding the date of the sale. 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.

IV. Administrative Record

The project file, Square Island Subdivision - ADL 109029, constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Central/Southern Southeast Area Plan for State Lands (CSSEAP, adopted 2000) and associated land classification files;
- *Alaska Interagency Wildland Fire Management Plan (2020 Review)*;
- *Alaska Department of Fish and Game Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes*;
- *NOAA Fisheries ShoreZone Mapping Website*;
- *U.S. Fish & Wildlife Service National Wetlands Inventory Mapper*;
- *FEMA National Flood Hazard Layer (NFHL) Viewer*;
- *Natural Resource Conservation Service Custom Soil Report for this project, dated November 20, 2019*; and
- DNR case files: National Forest Community Grant land selection (NFCG 283); preference right sale (ADL 106307); University of Alaska Agreement/Settlement (ADL 229389); Conveyance from University of Alaska to State of Alaska DNR (OSL 1424); and, other cases, documents, reports, etc. referenced herein.

V. Scope of the Proposal

The scope of this proposal, under the statutes described in the preceding **Section III. Authority**, is limited and specific to LCS's proposal to offer State-owned land within the defined project area for disposal and to conduct the proposed 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 LCS does not intend to impose deed restrictions for this purpose. The subdivision may be conducted in multiple stages.

VI. Location

The project area is located within DNR's Southeast Region, approximately 35 miles north of Ketchikan within Sections 25 and 36, Township 69 South, Range 88 East, and Sections 29, 30,

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and 31, Township 69 South, Range 89 East, Copper River Meridian, within the Ketchikan Gateway Borough (KGB). The project area consists of approximately 336 acres with 150 acres identified for disposal by this proposed action.

The project area is within the Ketchikan Gateway Borough and subject to the borough's platting authority.

Native Regional and Village Corporations: The project area is within the boundaries of the Sealaska regional corporation. There are no villages located within 25 miles of the project area, however, courtesy notification will be sent to village corporations and councils in Ketchikan, Kasaan, and Saxman.

VII. Property Description

Tract B, Township 69 South, Range 88 East, Copper River Meridian, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management, officially filed on June 24, 2002, containing 8.42 acres, more or less; and that portion of Tract A, Township 69 South, Range 89 East, Copper River Meridian, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management, officially filed on July 01, 2002, excluding ASLS No. 98-7, recorded November 20, 1998 as Plat No. 98-59, Ketchikan Recording District, containing 327.88 acres, more or less. The areas described aggregate 336.3 acres.

VIII. Title

Title Report No. 20523, current as of January 21, 2020 indicates the State of Alaska holds fee title to the land and mineral estate within the project area under Patent 50-2004-0049, dated November 19, 2003. The applicable State case files are NFCG 283 and OSL 1424. The parcel is subject to the reservations, easements and exceptions contained in the federal patent.

State Reservations of Title:

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

The State and its successors reserve the right to enter onto the land for the purposes of exploring for, developing, and producing these reserved mineral resources. Access reserved to these retained interests is superior to any and all surface uses. The State may also lease these retained interests to mineral developers or allow mining locations to be staked. However, *AS 38.05.130 Damages and Posting of Bond* also provides that the land estate owner will be compensated for damages resulting from mineral exploration and development.

Navigable Waters: Per *AS 38.05.126(b) Navigable and Public Waters*, "...the State has full power and control of all of the navigable or public water of the state, both meandered and unmeandered, and the State holds and controls all navigable or public water in trust for the use of the people of the state." This trust is in accordance with the principles of the Public Trust Doctrine, which are included in Article VIII, Section 14 of the

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Constitution of the State of Alaska and protected in the United States Constitution. It is vested in the title to this land, is not transferable, and the State's title to submerged lands under navigable waters cannot be relinquished by a transfer of the property. In holding with this concept, navigability determinations are made and access will be reserved per *AS 38.05.127 Access To and Along Public and Navigable Water*. For more information, see Access To, Within, and Beyond Project Area subsection of this document.

The Bureau of Land Management has not made a navigability determination for waters within the affected townships for title purposes.

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

IX. Physical Characteristics and Hazards

Information about the project area is based on internal research and information received during agency review. This is by no means a complete description of the project area and if this proposal is approved and the area offered for sale, it will be the responsibility of interested parties to inspect individual parcels prior to purchase to familiarize themselves with the physical characteristics of the land.

Terrain and Major Features: The terrain is mild with a gentle slope from the shoreline to an interior plateau approximately 80 to 120 feet in elevation. The island has a thin strip of hemlock forest along the shoreline, and mostly flat broken scrub forest and muskeg in the interior. The proposed development area is primarily within the strip of hemlock forest.

View: Parcels will have views of Cleveland Peninsula, Spacious Bay, and/or Behm Canal.

Vegetation: Vegetation consists of broken scrub spruce and muskeg with a mature hemlock forest along the coast of the island.

Soils: Soils within the project area generally consist of poorly drained muck and a well-drained plant material and gravelly soil. The primary soil types are Karheen peat and Salt Chuck extremely gravelly loam. Karheen peat is very poorly drained soil with a high water table. Salt Chuck extremely gravelly loam is well drained with a 10-inch organic layer, and a low water table. Away from the shorelines, the project area also contains Kaikli-Kina association which is a very poorly drained mucky soil with a high water table. There are some intermixed muskeg areas toward the center of the island.

Wetlands: Freshwater Forested/Shrub Wetlands exist within the portions of the project area that are inland from the shoreline. Wetlands will be considered in the subdivision design.

Geologic Hazards: Geologic hazards are common throughout Alaska. Information received from DGGS did not indicate any specific geologic hazards for this area. Should any geologic hazards be discovered in the development of this proposal, information will be included in offering materials.

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Fire Information: Pursuant to information received from the Division of Forestry, fire risk in the area is likely low. There is no reported history of fires within the vicinity. The project area is within the Limited Fire Management Option Area.

Fire management options and policies for the area are identified in the Alaska Interagency Wildland Fire Management Plan available from DNR Division of Forestry. The current fire management option for most of the project area is “Limited.” The guidelines on areas with the “Limited” management option reads, “Limited Management Option fires are assigned the lowest resource allocation priority.” It also states that the designation of a fire management option does not ensure protection from wildfire, that a protection response will be based on various factors, and “Ultimately it is the personal responsibility of the [landowner] to mitigate and minimize risk to their property and structures and to be ‘Firewise’.”

Flood Hazard: There is no Flood Insurance Rate Map available for the project area. There is potential for seasonal flooding and erosion of parcels adjacent to water bodies, especially in low-lying areas.

Water Resources: All surface and subsurface waters on all lands in Alaska are a public resource, subject to appropriation in accordance with the Alaska Water Use Act (AS 46.15). No water rights have been identified within the vicinity of the project area. There is no well or water quality information within the area. Potential water sources in the area include rainwater collection or collection from the several small, unnamed streams. Water quality is unknown. Additional information on wells, water quality, and drinking water may be obtained from the Alaska Department of Environmental Conservation.

Utilities: No known services exist within the project area.

Waste Disposal: No waste disposal facilities are available in the area. All on-site waste water disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation.

X. Background:

The state acquired the land within the project area under statehood entitlement, National Forest Community Grant (NFCG) for the purpose of furthering the development and expansion of communities. The state received tentative approval for the land in 1996, and patent for the surface and mineral estate in 2003. A one-acre parcel on the south shore of Square Island was conveyed into private ownership in 1999 through a non-competitive preference right sale. No other private property or prior State land offerings have occurred or exist in the area.

In 2008, state-owned land on the Cleveland Peninsula, along with the land within the project area was conveyed to the Board of Regents of the University of Alaska (UA) under case file ADL 229389. Shortly thereafter, the Supreme Court of Alaska enjoined the State from conveying the land to the UA, and the land was conveyed back to DNR in 2010. The reconveyed land was serialized as case file OSL 1424 and all original land classifications remained.

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LCS identified the project area for this project based on the purpose of the state's selection under NFCG No. 283 as a sufficient area to support a future remote community. While the area plan designated the project area as General Use, the proposed Area Plan Amendment intends to update the designation to Settlement/Settlement Commercial.

The project area is surrounded by Spacious Bay, Behm Canal, and the Cleveland Peninsula. Outside of the state-owned uplands on the Cleveland Peninsula to the south of the project area, all other uplands in the surrounding area are federally owned and part of the Tongass National Forest. The area is currently used by Ketchikan area residents for hunting and recreational use.

The project area is accessed by water, either by boat or float plane. Images and video footage from the NOAA ShoreZone viewer show that the north and east sides of the island contain a shoreline with rocky tidelands, while the south and west sides of the island are comprised of tidelands that are sandy. Driftwood has accumulated around the island above the line of mean high water. The uplands appear to be accessible without any bluffs. There are no known utilities or services within the project area. LCS intends to complete a field inspection of the project area prior to the final finding and decision.

LCS proposes to develop a subdivision of primarily waterfront parcels along the exterior of the island. The majority of the interior of the island will be retained in State ownership. Additionally, LCS intends to retain portions of the shoreline, connecting to the interior of the island to allow for public use, access, and wildlife habitat corridors. The proposal is limited to up 150-acres to be offered for sale, and the remaining approximately 186-acres will remain in State ownership.

The proposed subdivision will contain a minimum of one commercial parcel greater than five acres. The larger parcel size is necessary to accommodate topography and the possibility for small scale commercial development such as a commercial lodge. The larger parcels and retained lands will minimize adverse effects on other uses in the area.

The proposed subdivision within the project area will help fulfill 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. The subdivision will provide an excellent opportunity for the public to obtain waterfront land for settlement in a scenic area that is desirable for recreation, but also accessible by water from Ketchikan.

XI. Planning and Classification

The project area is within Central/Southern Southeast Area Plan (CSSEAP, adopted 2000), Region 5 - Ketchikan, Unit C-02 – Square Island. Lands within this unit are currently designated General Use, and classified Resource Management Land under Land Classification Order No. SE-00-001. The project area consists of all of the management unit. LCS reviewed the general management intent of the area plan and management unit for consistency with the proposed offering.

Region 5, Unit C-02 Considerations: Unit management intent states that this parcel is to be managed for dispersed recreation during the planning period. Only limited development activities may be authorized, except for facilities related to public safety and recreation. Management intent provides that land disposals and timber sales are not authorized during the planning period. The Parcel Description and Related information states that the parcel was selected under NFCG 282 for Remote

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Settlement. Management intent provides that the appropriateness of remote settlement in this tract shall be re-evaluated during the next CSSEAP update or when a revised Forest Plan is prepared by the US Forest Service; and, that the re-evaluation shall address the appropriateness of remote settlement and timber harvest on this tract.

The current plan is near the end of the 20-year planning period. LCS is proposing an area plan amendment to change the designation of Unit C-02 from General Use to Settlement and Settlement Commercial. The island is within a relatively remote location with access by boat or plane from Ketchikan. The area is attractive for remote settlement for recreational parcels, as well as commercial parcels for potential commercial recreation use. Given the relatively thin strip of Hemlock forest along the coast, LCS does not consider the parcel appropriate for timber harvest.

Area-wide Considerations: LCS reviewed the area plan's guidelines in Chapter 2 Areawide Land Management Policies. LCS will incorporate these considerations into the design and development of the project. 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.

Coordination and Public Notice: Management guidelines provide that public notice in accordance with *AS 38.05.945* is required for decisions involving the sale of State land, and that notice will be given to parties known or likely to be affected by an action. Public notice is being conducted in accordance with *AS 38.05.945*. Refer to section XVI. Submittal of Public Comments for more information.

Cultural Resources: Management guidelines provide that cultural surveys or inventories should be conducted prior to the design of land offerings, and that the Division of Parks and Outdoor Recreation Office of History and Archaeology (OHA) determines which areas have high potential to contain important cultural sites. LCS has coordinated with OHA early in the development of this proposal and will continue to coordinate with OHA through the design of the subdivision.

Fish and Wildlife Habitat and Harvest Areas: These management guidelines primarily provide guidelines for areas designated Habitat or Harvest. However, management guidelines regarding fish and wildlife habitat provide that all land use activities will be conducted with appropriate planning and implementation to avoid or minimize adverse effects on fish, wildlife, or their habitats. Impacts to fish and wildlife habitat will be mitigated by retaining the interior portion of the island, as well as corridors to the coastline. In addition, ADF&G was consulted during the agency review period and recommended that the state retain land within 500 feet of two known harbor seal haulouts on the northeast shore of the island. ADF&G had no objections to the proposed disposal.

Forestry: Area-wide management guidelines provide that in areas designated Settlement, state commercial timber sales will adhere to the Forest Resources and Practices Act (FRPA) and pertinent state regulations for commercial forestry, and will not be considered a "land use conversion" as described in FRPA. Such timber

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harvest shall be a direct support of current or future state subdivision development. However, beach salvage and salvage of damaged trees may occur separately from subdivision design. A license is required for beach log salvage. Given the relatively thin strip of Hemlock forest along the coastline, LCS does not propose timber harvest prior to sale.

Material Sites: Management guidelines provide that generally, if a settlement area contains high value material resources, a pit area should be identified and retained in State ownership. No high-value material resources have been identified within the project area.

Recreation, Tourism, and Scenic Resources: Area-wide goals provide that land sales may encourage commercial development of recreational facilities and services that are provided by private enterprise, while minimizing environmental impacts and conflicts with existing users of the area. LCS proposes to include at least one or more larger lots within the subdivision to be made available for commercial use.

Settlement: Goals regarding settlement provide that DNR will offer land suitable for year-round residences for community expansion, seasonal residences for recreation, and industrial or commercial development. Applicable management guidelines include Planning and Coordination; Protection, Management, and Enhancement of Other Resources; and, Design. These guidelines have been considered in the development of this proposal. DNR should retain greenbelts, buffer areas, public use corridors, stream corridors, scenic areas, legal access, and other public facilities as appropriate to help preserve important habitat, recreational, educational, and public use areas. Subdivision design will preserve and enhance the natural setting and will take into account site limitations such as slope, drainage, soils, and erosion to ensure that land is buildable and environmental impact can be mitigated.

Shorelines and Stream Corridors: Area-wide management guidelines provide that DNR should reserve public access to waterbodies when transferring land out of state ownership. LCS will reserve a 50-foot easement along the Mean High Water (MHW) of Spacious Bay and any other water bodies determined to be public water, and will reserve a 25-foot building setback outside of this easement. Refer to the *Easements, Setbacks, and Reservations* subsection for more information.

Subsurface Resources: Management guidelines note that mining operations are judged to be incompatible with future settlement and settlement related activities. The project area was not designated settlement and was not closed to mineral entry at the time the plan was adopted. Consistent with the general management intent of the plan, LCS proposes to close the project area to mineral entry via MO 1234.

Trail and Public Access Management: Area-wide management guidelines provide that public access to areas with significant public resource values should be retained or improved by retaining means of access in public ownership, reserving rights of access when selling or leasing state land, or asserting rights-of-way. There are no trails identified in the project area, however, the state will retain easements as appropriate to maintain access through and within the project area. See the Access To, Within, and Beyond Project Area section for more information.

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The proposed offering will be consistent with area-wide land management policies and general management intent of the CSSEAP and specific management unit 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*. The project area is currently designated General Use and classified Resource Management, and requires an amendment to the CSSEAP and a Land Classification Order prior to disposal. The proposed amendment will change the designation of Unit C-02 from General Use to Settlement and Settlement Commercial. This parcel is to be managed as settlement land under the amendment.

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 Amendment: DNR proposes to amend the Central/Southern Southeast Area Plan (CSSEAP, adopted 2000) to change the designation of Unit C-02 from General Use to Settlement and Settlement Commercial. The management intent will be changed to state that residential and commercial uses are appropriate and the land be closed to mineral entry prior to disposal.

Land Classification Order: In relation to the proposed Area Plan Amendment, LCS proposes to reclassify Unit C-02 with a Land Classification Order from Resource Management to Settlement land.

Mineral Activity and Order: No mineral activity has been identified on these lands. The entirety of the project area (approximately 336 acres) will be closed to new mineral entry if the mineral order is approved in accordance with *AS 38.05.185 Generally* and *AS 38.05.300 Classification of Land* for a land disposal. The proposed mineral order, if approved, will close the area to new mineral entry only and will not affect current existing mining claims. Closing the entire area to mineral entry is consistent with the management intent of the CSSEAP amendment.

Mineral orders which close an area to mineral entry, close the applicable area to new exploration and development of locatable minerals. Such mineral orders do not apply to leasable minerals (such as: oil, gas, coal, etc.), or exploration licensing for such, nor do they preclude reasonable surface access to these resources. However, *AS 38.05.130 Damages and Posting of Bond* stipulates that the land estate owner will be compensated for damages resulting from exploration and development.

Mining activity for locatable minerals would be incompatible with the past, current, and proposed land estate uses for land disposals. To allow new mineral location within the boundaries of the parcels encompassed by this decision could create serious conflicts between land estate and mineral estate users. Area plan management guidelines regarding subsurface resources state that mining operations are judged to be incompatible with future settlement and settlement related activities. Consistent with the general management intent of the plan, LCS proposes to close the project area to mineral entry prior to sale.

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Local Planning: The project area is within the KGB 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 Ketchikan Comprehensive plan, however, the plan does not discuss the project area. Review of the plan did not indicate any conflicts with the proposed State land disposal.

XII. Traditional Use Finding

The project area is located within the KGB and a traditional use finding is therefore not required per *AS 38.05.830 Land Disposal in the Unorganized Borough*. However, information on current or traditional use is welcomed and can be given during the public comment period. See the **Section VIII. Submittal of Public Comments** at the end of this document and *Attachment B: Public Notice* for details on how to submit comment.

Access To, Within, and Beyond Project Area

Access to the project area is via boat or float plane. Subdivision design will take into account topography and access to lands beyond the project area and within the project area boundaries. The project area is subject to the platting authority of the KGB. Approval of platting actions and dedication of rights-of-way 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 rights-of-way as necessary to ensure unobstructed access to and along the body of water. Regulations dictating the creation of easements or rights-of-way under this statute include *11 AAC 51.035 Determination of Navigable and Public Water*, and *11 AAC 51.045 Easements To and Along Navigable and Public Water*, and *11 AAC 53.450, Buffer Strips, Reserved Areas, and Public Easements*.

For the purposes of *AS 38.05.127*:

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

Parcels will be subject to access reservations in accordance with *AS 38.05.127 Access to Public or Navigable Water* and a 25-foot building setback outside of easements along the MHW of the water bodies described, as well as any additional water bodies identified as public or navigable prior to completion of survey in accordance with the CSSEAP.

Building Setbacks From Public or Navigable Water: If subdivision is deemed feasible, LCS proposes to place a note on the final survey plat describing a building setback upland from the Ordinary High Water (OHW) or MHW of public or navigable water to protect access, fish and wildlife habitat, and personal property. Structures and subsurface sewage disposal systems will not be permitted within the building setback, except for utilities, water-dependent structures whose purpose is access to or across the

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stream or lake, or minor accessory structures for uses that must be in or adjacent to the water body in order to function.

Easements, Setbacks, and Reservations: Subdivision design may include a variety of easements, setbacks, and retained lands, which will be identified on the subdivision plat and included in related documents. Standards for easements are provided in 11 AAC 51.015 or by local platting ordinances. 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:

- public access easements;
- utility easements;
- a 50-foot-wide section-line easement on each side of surveyed and 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* as part of the subdivision development;
- a 50-foot continuous easement upland from the OHW or MHW of public or navigable water bodies in accordance with AS 38.05.127 *Access To Navigable or Public Water*;
- a minimum 25-foot building setback adjacent to buffers or easements from the MHW of public or navigable water bodies, in accordance with the area plan;
- 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; and,
- additional reservations and/or restrictions required through the local platting authority.

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

Retained Lands: A minimum of 185 acres toward the center of the island will be retained in State ownership. This land will continue to be available for public recreational use. The subdivision will be designed with parcels located around the perimeter of the island, with several corridors of retained land to provide public access to the center of the island.

XIII. Hazardous Materials and Potential Contaminants

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

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of the site should such substances eventually be found. Interested parties are encouraged to inspect the property and familiarize themselves with the condition and quality of the land prior to bid or application submittal.

LCS recognizes there are potential future environmental risks when previously vacant land is occupied. Many of the activities increasing these potential risks are regulated by other agencies, such as the regulation of septic system installation by the State of Alaska, Department of Environmental Conservation. This risk is no greater than when vacant private land undergoes development. Given the high degree of interest from both the legislature and citizens in transferring State-owned land into private ownership, LCS is of the opinion that the benefits of offering the land outweigh the potential risks.

XIV. Survey, Platting, and Appraisal

After evaluating public comment and conditions of the land, DNR will determine if it is in the State's best interest to offer the proposed project area. In 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 Ketchikan Gateway 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 a Final Finding and Decision, if this proposed action is approved.

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

Project research and development includes consideration of economic factors utilizing market data and project development costs compiled by DNR DMLW staff, to evaluate the economic feasibility of a project. Since it commonly takes several years for the project development process, *AS 38.05.840* ensures the current market conditions are addressed in order to obtain a realistic minimum bid or purchase price for the sale of State land.

XV. 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. Combined Division and Agency review was conducted for the proposed Area Plan Amendment and Land Classification Order from November 23, 2019 through December 20, 2019. Combined Division and Agency review was conducted for the land disposal from February 26, 2020 through March 12, 2020. Comments pertinent to this proposed action received during agency review have been considered and addressed below. Additional timely comments received during the Public Notice period will be considered and addressed in a subsequent Final Finding and Decision if one is issued.

DNR DMLW LCS received brief comments of non-objection regarding the proposed Area Plan Amendment, Land Classification Order, and land disposal from the following agencies: DNR Division of Oil and Gas; DNR Division of Forestry; DNR Division of Parks and Outdoor

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Recreation; Alaska Department of Transportation & Public Facilities; Alaska Mental Health Trust Land Office; and, DNR Division of Geological & Geophysical Surveys.

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

Alaska Department of Fish and Game, Division of Wildlife Conservation (ADF&G) Comment: ADF&G states that hunters and trappers do not intensively use Square Island, likely due to exposure. The surrounding area has a sea cucumber fishery and numerous anadromous water bodies that empty into Spacious Bay from Cleveland Peninsula. Two harbor seal haulouts exist approximately 350 meters offshore of the northeast side of the island and four more are within Spacious Bay, however, these are not considered key haulouts. Increased boat and aircraft traffic near these haulouts can potentially disturb seals. ADF&G recommends maintaining a minimum altitude of 457 meters when traveling over by aircraft and a minimum distance of 500 meters by watercraft.

ADF&G states that the proposed subdivision would not likely produce a significant impact to fish and wildlife resources or public access to them. However, ADF&G recommends retaining portions of the shoreline in state ownership as well as dedicating several public access easements from the shoreline to the interior of the island to support public access. In addition, ADF&G recommends retaining a portion of the northeast shore of the island within at least 500 meters of the mentioned harbor seal haulouts.

DNR DMLW LCS Response: LCS appreciates your review of this proposal. LCS intends to create several public access corridors from the shoreline to the interior through subdivision design. This land will be retained in state ownership. In addition, LCS will also consider the recommended 500-meter buffer from the harbor seal haulouts adjacent to the island during subdivision design.

DNR Division of Parks and Outdoor Recreation, Office of History and Archaeology (OHA) Comment: The Alaska Heritage Resources Survey (AHRS) database indicates a potential location of interest within the proposed project area.

DNR DMLW LCS Response: LCS will coordinate with OHA and alter subdivision design to limit impact to cultural resources within the project area. Any identified locations of interest will be retained in state ownership.

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

- Department of Environmental Conservation;
- Department of Natural Resources;
 - Division of Agriculture;
 - Office of Project Management and Permitting; and
 - State Pipeline Coordinator's Section;
- Alaska Railroad;
- Alaska Soil and Water Conservation Districts; and,
- University of Alaska Land Management.

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XVI. Submittal of Public Comments

See Attachment B: Public Notice for specific dates and conditions.

Pursuant to *AS 38.05.945 Notice*, LCS is issuing public notice inviting comment on this Preliminary Decision, 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 to hold a public hearing.

LCS will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the Preliminary Decision, 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 LCS responses will be issued as a subsequent Final Finding and Decision, CSSEAP Amendment No SE-00-001A08, Land Classification Order CL SE-00-001A08, and Mineral Order 1234 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.

Only persons from whom LCS receives timely, written comment during the identified comment period will be eligible to file an request for reconsideration of the Final Finding and Decision, CSSEAP Amendment No SE-00-001A08, Land Classification Order SE-00-01A08, and Mineral Order 1234. Upon approval and issuance of a Final Finding and Decision and 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.

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

**DEADLINE TO SUBMIT WRITTEN COMMENT IS
5:00 PM, TUESDAY, OCTOBER 27, 2020**

XVII. Alternatives and Discussion

LCS is considering the following alternatives:

Alternative 1: (Preferred) Survey and plat a subdivision consisting of up to 40 parcels no smaller than one acre and offer those parcels for sale. The development and offering of

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these parcels may be completed in multiple stages. This proposal includes amendment to the CSSEAP, Land Classification Order, and mineral order.

Alternative 2: (No Action) Do not offer this project area for private ownership. Retain the land in State ownership.

Article VIII, Section 1 of the Alaska Constitution states, “it is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.” Furthermore, *AS 38.05.045 Generally* has placed this charge with DNR, and the legislature has provided funding to administer the land sale program.

Alternative 1 provides a method for DNR to meet the obligations laid out in the Constitution and statute, and maximizes public interest. This offering provides an opportunity for the public to obtain land for settlement in a desirable area for recreation. This proposal, if approved in a subsequent Final Finding and Decision, will allow LCS to create and design a subdivision which will provide for the best use and development of the land and financial return to the State. Alternative 1 provides the greatest opportunity for more Alaskans to purchase land within this area. Due to the recreation amenities of the area, views, waterfront access, and location relative to the community of Ketchikan, the project area is better suited to subdivision prior to offering. Alternative 1 is preferred.

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 does not approve the project, the related actions will not be processed.

Alternative 2 does not meet the legislative and public desire for DNR to offer State-owned land for private ownership. Retention of this land would inhibit DNR from meeting its constitutional, statutory, and legislative goals. Not offering the project area would deny many Alaskans the opportunity to obtain land in an area that was selected by the State as a sufficient area to support a future remote community. Alternative 2 is not preferred.

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

Recommendation follows.

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XVIII.Recommendation

This Preliminary Decision for the proposed disposal of State lands, CSSEAP Amendment No SE-00-001A08, Land Classification Order CL SE-00-001A08, and Mineral Order 1234 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, CSSEAP Amendment No SE-00-001A08, Land Classification Order CL SE-00-001A08, and Mineral Order 1234. If the decision is approved, CSSEAP Amendment No SE-00-001A08, Land Classification Order CL SE-00-001A08, and Mineral Order 1234 will accompany and precede any Final Finding and Decision issued.

Signature on file

Prepared by: John King
Natural Resource Specialist III
Land Conveyances Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

9/22/2020

Date

Signature on file

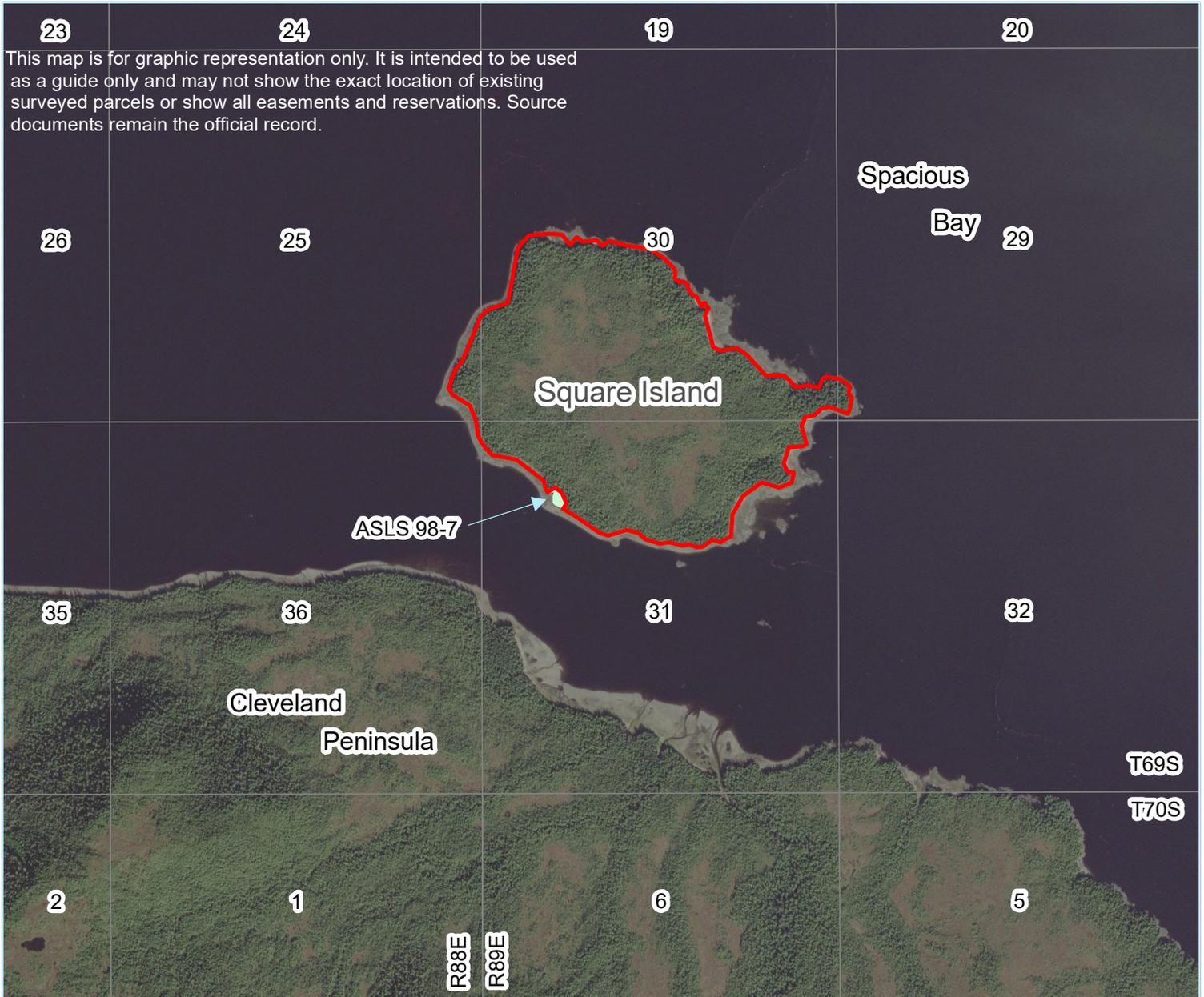
Approved by: Tim Shilling
Natural Resource Manager II
Land Conveyances Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

9/22/2020

Date

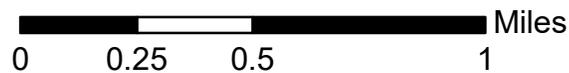


Attachment A: Vicinity Map Square Island Subdivision ADL 109029



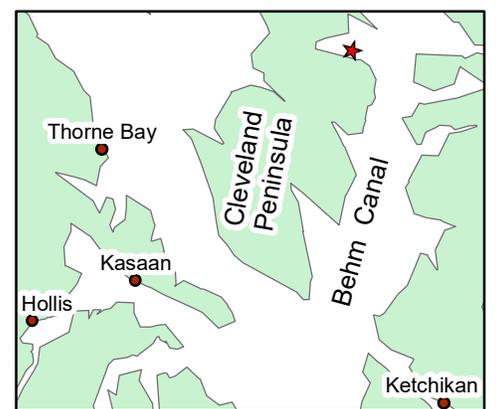
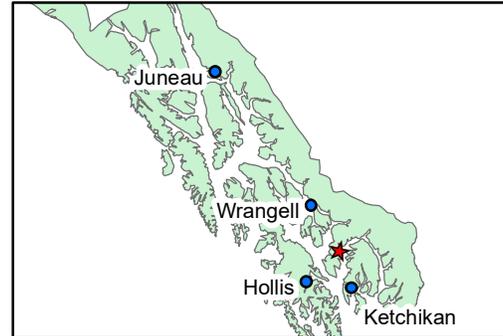
Legend

- Project Area
- ADL 106307; ASLS 98-7



Sections 29-32, T69S, R89E excluding ASLS 98-7; Sections 25 & 36, T69S, R88E, Copper River Meridian

JDK 8/10/20



USGS QUAD 1:63,360
 Ketchikan (D-6), Alaska
 For more information contact:
 John King
 Department of Natural Resources
 Division of Mining, Land, and Water
 Land Conveyance Section
 Phone 907.465.3511
 Fax 907.500.9011
 Email: land.development@alaska.gov

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

ATTACHMENT B: PUBLIC NOTICE

Requesting Input for a Proposed Land Offering:
Square Island Subdivision – ADL 109029

COMMENT PERIOD ENDS 5:00PM, TUESDAY, OCTOBER 27, 2020

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

Location: Square Island, approximately 35 miles north of Ketchikan within Sections 25 and 36, Township 69 South, Range 88 East, and Sections 29, 30, and 31, Township 69 South, Range 89 East, Copper River Meridian, within the Ketchikan Gateway Borough (KGB).

Project size: Approximately 336 acres with 150 acres proposed development area

Proposed Offering: up to 40 parcels no smaller than one acre

To obtain a copy of the 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, Fairbanks at 907-451-2705, or the Southeast Land Office in Juneau at 907-465-3400 (TTY for the hearing impaired for all locations: 711 for Alaska relay or 800-770-8973), or go to <http://dnr.alaska.gov/commis/pic/> for additional contact information. Individuals who require special assistance must request assistance from the Public Information Center in Anchorage no later than 4:00 PM, Tuesday, October 20, 2020.

Pursuant to *AS 38.05.945 Notice*, the public is invited to submit comment on the Preliminary Decision, Mineral Order, Land Classification Order, and/or 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, OCTOBER 27, 2020.** Only persons from whom DNR DMLW LCS receives timely, written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision. Written comment may be received by email, fax, or postal mail. To submit comments or for direct inquiries, contact John King, Natural Resource Specialist III: land.development@alaska.gov, fax # 907-500-9011, or P.O. Box 111020 Juneau, AK 99811. If you have questions, call John King at 907-465-3511.

DNR will be holding a Public Meeting to discuss the proposal and share information about the project area. The Public Meeting will be held from 5 p.m. – 7 p.m. on Thursday, October 1, 2020 at The Landing Hotel (3434 Tongass Avenue Ketchikan, Alaska 99901) in the banquet room adjacent to Jeremiah's lounge. Use of face masks or face coverings is strongly encouraged for attendees.

If no significant change is required, the Preliminary Decision and related actions including any minor changes and a summary of comments and responses, will be issued as the Final Finding and Decision, Mineral Order 1234, Land Classification Order CL SE-00-001A08, and Area Plan Amendment SE-00-001A08, without further notice. A copy of the Final Finding and Decision and related actions will be sent to any persons who commented timely on the Preliminary Decision.

Attachment B: Public Notice

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