

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

**Proposed Noncompetitive Public and Charitable Use Sale to Applicant,
Municipality of Anchorage**

PRELIMINARY DECISION – AS 38.05.810(a)

ADL 231726

and

PROPOSED RELATED ACTIONS

Site Specific Plan - AS 38.04.065

Land Classification Order - AS 38.05.300

Proposed Action, Noncompetitive Sale: The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), has received an application from the Municipality of Anchorage (MOA) to purchase a portion of the state-owned Old Glenn Highway right-of-way fronting two surveyed lots owned by MOA in Chugiak pursuant to Alaska Statute 38.05.810(a) Public and charitable use. The two parcels (Parcels A and B, see Attachment A) are needed by the applicant for existing and proposed uses on the adjacent municipally-owned lots. In particular, Parcel A is needed for a new fire station under construction on Lot 1.

Proposed Related Actions: The Preliminary Decision is dependent on adoption of the proposed Site Specific Plan authorizing the proposed Land Classification Order (LCO). See the section on 'Proposed Related Actions', following, for details. These documents accompany this Preliminary Decision for public review. Although the recommended action outlined in this Preliminary Decision is dependent on concurrent, associated actions of the types noted above, the Preliminary Decision *only affects* the proposed disposal action. Separate authorities and procedures exist for the Site Specific Plan and LCO.

Waiver of Reversionary Interest: The department proposes to waive the reversionary interest per AS 38.05.810(g), as further described below.

The public is invited to comment on this Preliminary Decision of the proposed noncompetitive sale and waiver of reversionary interest as well as on the proposed related actions: Site Specific Plan and Land Classification Order. **The deadline for comments is 5:00 PM Friday, September 5, 2014;** see page 10-11 for information on how to submit comments. Please submit comments regarding the Preliminary Decision, Waiver of Reversionary Interest, and each related action separately.

Authority: The applicable authority includes, but is not limited to, the following Alaska Statute (AS):

AS 38.05.810(a). Public and charitable use

Administrative Record: The administrative record for the proposed action consists of the following case file: ADL 231726. Also incorporated by reference are SCH-33 (State Conveyance File), Chugiak-Eagle River Comprehensive Plan Update (adopted December 2006) and Title 21 of the Municipality of Anchorage Code.

Scope of the Decision: The scope of this decision is limited to determining if the applicant and the subject parcels qualify under the public and charitable use statute, if it is in the state's best interest to dispose of the subject parcels and if it is in the state's best interest to dispose of the parcels to the current applicant (Municipality of Anchorage) pursuant to AS 38.05.810(a) Public and charitable use.

This proposed decision will allow these parcels to be sold through a noncompetitive sale to the applicant. This action complies with the general recommendations of the proposed Site Specific Plan and the Chugiak-Eagle River Comprehensive Plan Update.

AS 38.05.810(a) authorizes the disposal of state land to a political subdivision for a public and charitable use. The applicant proposes to use Parcel A for the construction of a new fire station and has applied to purchase Parcel B as well, since it already holds the easement interest previously vacated by the Department of Transportation and Public Facilities, and is using the parcel for municipal purposes. See Attachment A. The subject parcels are School Trust Land and must be sold for appraised fair market value. The applicant is responsible for bearing the cost of the public notice, survey and appraisal as well as the purchase price. The purchase price for the parcels will be set at the appraised fair market value.

AS 38.05.810(g) requires the state retain a reversionary interest in a disposal for a public or charitable use under AS 38.05.810(a) unless this reversionary interest is waived by the commissioner on a finding that a waiver is in the public interest. In this case, the department proposes to waive the reversionary interest as it has been determined to be in the public interest to do so.

Proposed Related Actions: The following related actions will occur concurrently with the Final Finding and Decision: to approve a Site Specific Plan for the area and classify the subject parcels as Settlement. These actions are described in more detail in the sections **Planning and Classification**.

Description:

Location: The subject parcels front two municipality-owned lots located in Section 36, Township 15 North, Range 2 West, Seward Meridian. The parcels are within the Old Glenn Highway right-of-way in Chugiak southwest of Lower Fire Lake. The street

addresses of the adjacent lots owned by MOA are 14020 (Lot 1) and 14080 (Lot 2) Old Glenn Highway. See Attachment A.

Geographic Features: The subject parcels are cleared. Parcel B is partially occupied by a building and numerous motor vehicles of varying condition.

Potential Flood Hazard: Municipality of Anchorage FEMA Floodplain Mapping indicates the subject parcels are outside of the 100-Year Floodplain.

Municipality/Borough: The subject parcels are located within the boundaries of the Municipality of Anchorage, a Unified Home Rule Borough.

Native Regional/Village Corporations/Councils: The Native regional corporation is Cook Inlet Region, Inc. The nearest Native village corporation is Eklutna, Incorporated. The nearest traditional council is the Native Village of Eklutna.

USGS Map Coverage: The subject parcels are located on USGS Quad Anchorage B7.

Legal Description: The two unsurveyed parcels are located within the East 1/2 of Section 36, Township 15 North, Range 2 West, Seward Meridian. They are situated within the right-of-way of the Old Glenn Highway and are adjacent to two surveyed lots (Lots 1 and 2, Plat 63-115, Anchorage Recording District, EPF 30007). Parcel B extends from the most southerly corner of Lot 2 to the most easterly corner of Lot 2. The DOT/PF Deed of Vacation issued for Parcel B contains a metes and bounds description (Book 1742, Page 0506, Anchorage Recording District). Parcel A extends from the most southerly corner of Lot 1 to the most easterly corner of Lot 1. The parcels total approximately 0.58 acre in size. The parcels will be surveyed prior to disposal.

Title:

Acquisition Authority: Title report #4335 was issued for Parcel A on February 11, 2013; title report #4584 was issued for Parcel B on August 14, 2013. The State of Alaska received title to the subject parcels by Omnibus Act quitclaim deed issued June 25, 1959.

Title Status: This is state land conveyed by federal patent 1226962 issued May 18, 1962.

Title Restrictions: The parcels are subject to the reservations, easements, and exceptions contained in the federal patent.

State Retained Interest: The State retains ownership of all oil, gas, coal, ore, minerals, fissionable material, geothermal resources, and fossils that may be in or upon the land that it sells (AS 38.05.125). 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. Under common law, this access reservation is superior to any and all surface uses. The State may also lease them to mineral developers or allow mining

locations to be staked. However, Alaska law also provides that the surface owner will be compensated for damages resulting from mineral exploration and development (AS 38.05.130).

Native Interest: The subject parcels are within the boundaries of Cook Inlet Region, Inc. There are no Native interests identified with these parcels.

School Trust Land: This is School Trust Land (SCH 33). Disposal of these parcels is subject to Department Order (DO) 143, which requires the School Trust lands be disposed of at the appraised fair market value. The proceeds from the disposal will be deposited into a DNR trust account established as a result of the school trust litigation. Notice of this proposed disposal will be provided in accordance with DO 143 as part of the public notice process that follows the signing of this Preliminary Decision.

Other Conflicts or Pending Interest: The Alaska Department of Transportation and Public Facilities (DOT/PF) has an easement interest in Parcel A. DOT/PF has agreed to vacate its easement interest upon issuance of the Final Finding and Decision to sell the parcel. There are no known third party interests in Parcel B as DOT/PF vacated its easement interest in the parcel by Commissioner's Deed of Vacation on March 18, 1988. All of section 36 is included in an Oil & Gas Lease Sale Tract (LST CI0619) but there are no active leases in the area.

Background: The Municipality of Anchorage applied to purchase the state's interest in a portion of the Old Glenn Highway right-of-way fronting two surveyed lots owned by MOA in Chugiak (Lots 1 and 2, Plat 63-115, Anchorage Recording District, EPF 30007) pursuant to Alaska Statute 38.05.810(a) Public and charitable use. The original application from MOA was for the purchase of Parcel A only. The Municipality later amended its application to add the purchase of Parcel B as well. See Attachment A.

Lots 1 and 2 and the surrounding area are designated for Community Facilities in the Chugiak-Eagle River Comprehensive Plan Update (adopted in 2006). Lot 2 was previously occupied by a Chugiak Volunteer Fire & Rescue Company fire station, which has been removed; it is presently occupied by a warehouse and numerous vehicles of varying condition. The portion of right-of-way fronting Lot 1 (Parcel A), is required for the construction of the new fire station on Lot 1 because the size and topography of the lot are inadequate to allow construction of the entire new facility within its boundaries according to the Municipality of Anchorage. DOT/PF has agreed to vacate its easement interest in Parcel A pending approval of the sale by the state. In 1988 DOT/PF vacated to the Municipality its easement interest in a portion of the Old Glenn Highway right-of-way fronting Lot 2 (Parcel B). However, the underlying fee remains in state ownership. The subject parcels are School Trust lands and must be sold at appraised fair market value. Lots 1 and 2 were conveyed to the Municipality in 1980 as part of its municipal entitlement.

Planning and Classification:

DNR Site Specific Plan: There is no state area plan for this area. Therefore, in accordance with statutory and regulatory requirements, a site specific plan must be prepared in order to classify the subject parcels Settlement so the parcels can be sold. The site specific plan must assess the resources of the subject parcels, evaluate potential uses of the subject parcels and the effects those uses may have on adjacent properties. Feasible alternatives will be identified and evaluated.

The site specific plan and land classification order are separate actions and the decision to dispose of Parcels A and B is contingent upon approval of these related actions. These related actions are included with, but not part of, this decision and should be consulted for more detailed information.

Land Classification: The subject parcels are not classified. They are proposed to be classified Settlement in accordance with the Site Specific Plan.

Land Classification Order: If approved by the Commissioner, the land classification order will classify the subject parcels as Settlement. This action only affects the subject parcels. If the Department approves the proposed sale, the land classification order will accompany the Final Finding and Decision. The land classification order is a separate action, occurring concurrent with the signing of the Final Finding and Decision.

Coastal Issues: The subject parcels are located within the Municipality of Anchorage Coastal Zone boundary. The department will notify the Municipality of Anchorage coastal management program of this proposed action.

Mineral Order: Not applicable to this decision.

Local Planning: The Chugiak-Eagle River Comprehensive Plan Update (adopted December 2006) is the applicable local land use plan. DNR is not required to follow local plans, but must consult them in order to determine if inconsistencies exist between the proposed action and local land use plans and ordinances.

The Chugiak-Eagle River Comprehensive Plan Update designates Lots 1 and 2 and the surrounding area for Community Facilities. Plan goals and policies place a high priority on fire protection and emergency medical services in the Chugiak area. The old Chugiak fire station originally located on Lot 2 has been demolished. Until a new fire station/emergency medical services facility is operational on Lot 1, there is no nearby fire/emergency services facility. The proposed Site Specific Plan is structured to accommodate this need and make the two state-owned parcels available to the Municipality.

Parcel A is zoned PL-1 Public Lands and Institutions and Parcel B is zoned I-1 Light Industrial. Both zoning categories allow public safety facilities, specifically including fire stations.

Easements and Setbacks: Not applicable to this decision.

Access: Access to the subject parcels is from the Old Glenn Highway. Parcel A can also be accessed from West Lake Ridge Drive.

Access To and Along Public or Navigable Water: Not applicable to this decision.

Traditional Use Findings: A traditional use finding is not necessary because the subject parcel is located within an organized borough.

Reservation of Mineral Estate: In accordance with section 6(i) of the Alaska Statehood Act and AS 38.05.125, the state, if the proposed sale is approved, reserves unto itself the mineral estate, including oil and gas, and the rights expressed in the reservation clause of the statute, that being the right to reasonable access to the surface for purposes of exploring for, developing and producing the reserved mineral resources. Exploration and development, if any, which could occur, would be consistent with AS 38.05.130 and other applicable statutes and regulations.

Hazardous Materials and Potential Contaminants: There is no known contamination of, or hazardous materials on, the subject parcels. The Department recognizes there are potential environmental risks associated with development that may occur when public land is transferred into private ownership. The need to offer quality and accessible land to the public outweighs this risk.

The State of Alaska makes no representations and no warranties, express or implied, as to the presence or absence of hazardous substances, hazardous wastes, contaminants, or pollutants on the land proposed here for conveyance. The State of Alaska does not assume any 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. The subject land is sold on an "as is" basis and in the condition as of the date of sale.

Performance Guaranties and Insurance: Not applicable to this decision.

Survey: A Preliminary Survey Determination was issued on February 13, 2014. Based upon an initial investigation, the subject parcels have been determined to be unsurveyed. Following DNR approval of the proposed sale of the subject parcels, the applicant will be required to complete an Alaska State Land Survey to state standards at the applicant's expense. The survey must be approved by the Department and the Municipality of Anchorage and filed in the appropriate recording district.

Compensation/Appraisal: An appraisal is required. The parcel will be disposed of at appraised fair market value. AS 38.05.810(a) allows for purchase of land for public and charitable use at less than fair market value. However, the subject parcels are School Trust Land and therefore must be sold at appraised fair market value pursuant to Department Order 143. The valuation date of the appraisal will be set as the date of

issuance of an approved Final Finding and Decision or subsequent Amended Final Finding and Decision (if needed). At the appropriate time, the Division will notify the applicant to begin the appraisal process and will provide a list of approved appraisers. The applicant's appraiser is required to contact the Division's Appraisal Unit for appraisal instructions in advance of the appraisal. The applicant bears the cost of appraisal.

Agency Review: Division Review was conducted from July 24 to August 16, 2013. The Easement Unit responded with no comment. Agency review was conducted from August 20 to September 6, 2013. DNR Division of Oil and Gas requested that the applicant be made aware of the standard reservation of the mineral estate. No adverse comments or objections were received.

Additional comments received during the Public Notice period will be considered and addressed in the Final Finding and Decision.

Waiver of Reversionary Interest: The State proposes to waive the reversionary interest in the subject parcels pursuant to AS 38.05.810(g) if the conveyance is approved. Conveying the parcels with the reverter provision is not in the public interest nor would exercising the reverter serve any useful public purpose since DOT/PF will have vacated its easement interest and future highway use is unlikely to occur. Retaining the parcels in Municipal ownership would be preferred to avoid future trespass and management issues.

Discussion: The Municipality of Anchorage applied to purchase a portion of the Old Glenn Highway right-of-way fronting two surveyed, municipality-owned lots in Chugiak pursuant to Alaska Statute 38.05.810(a) Public and charitable use. The original application from MOA was for the purchase of Parcel A only. The Municipality later amended its application to add the purchase of Parcel B as well.

Lots 1 and 2 and the surrounding area are designated for Community Facilities in the Chugiak-Eagle River Comprehensive Plan Update (adopted in 2006). Lot 2 was previously occupied by a Chugiak Volunteer Fire and Rescue Company fire station, which has been removed; Lot 2 and Parcel B are presently occupied by a warehouse and numerous vehicles in varying condition. The portion of right-of-way fronting Lot 1 (Parcel A), is required for the construction of the new fire station on Lot 1 because the size and topography of the lot are inadequate to allow construction of the entire new facility within its boundaries according to the Municipality of Anchorage. DOT/PF has agreed to vacate its easement interest in Parcel A pending approval of the sale by the state. In 1988 DOT/PF vacated to the Municipality its easement interest in a portion of the Old Glenn Highway right-of-way fronting Lot 2 (Parcel B). However, the underlying fee remains in state ownership. The subject parcels are School Trust lands and must be sold at appraised fair market value. Lots 1 and 2 were conveyed to the Municipality in 1980 as part of its municipal entitlement.

The state is proposing to convey the subject parcels to MOA at appraised fair market value for public and charitable use and to waive the reverter requirement. Approval of this conveyance will require the concurrent approval of the Site Specific Plan for the area and LCO to classify the subject parcels as Settlement.

Alternatives: The following alternatives were considered.

Alternative 1: Sell

Offer the parcels for disposal as proposed in this decision. If determined to be in the best interest of the State, AS 38.05.810(a) allows a political subdivision to purchase State land for a public and charitable use. The disposal of the subject parcels will meet identified local public needs, generate revenue for the School Trust, and further stated goals and objectives of the community. The subject parcels are located adjacent to lots owned by the Municipality of Anchorage since 1980. MOA is constructing a new fire station on Lot 1 to provide fire protection to the local community and requires Parcel A to accommodate this structure and use. DOT/PF vacated its easement interest in Parcel B to MOA in 1988 and the parcel is partially occupied by a building and a variety of vehicles. DOT/PF has agreed to vacate its easement interest in Parcel A upon approval of the sale, indicating that future highway related uses are not anticipated. There are no feasible potential uses for the subject parcels except for the proposed use which will satisfy an identified community need. The state proposes to waive its reversionary interest in the parcels at conveyance as described above. Alternative 1 is the preferred alternative.

Alternative 2: Lease

Lease the parcels to the Municipality for a public and charitable use. This alternative would not meet the Municipality's long term needs and would result in the State owning land potentially encumbered by an MOA fire station. The community has identified the need for a fire fighting/EMT facility to serve residents of the area on a long term basis. Municipal ownership of the land is a more effective means of achieving local goals than continued state ownership. Leasing the parcels may not generate the same amount of revenue for the School Trust as a sale. This alternative is less favorable than sale and is not preferred.

Alternative 3: Retain

The Department will take no action and retain the parcels. The State would need to expend resources managing the parcels. The state will also have to contend with potential trespass issues. The applicant will have to alter construction plans for the fire station. The applicant is utilizing the subject parcels for security and access to the building site. Retaining the subject parcels in state ownership is not in the best interests of the State. This alternative is not preferred.

Recommendation: The proposed action, Alternative 1, is believed to be in the overall best interest of the state and is consistent with the requirements of AS 38.05.810(a). Alternative 1 provides accessible land for public and charitable use and satisfies a community need. There is no identified public purpose to be served by not selling the parcels. DOT/PF has already vacated its easement interest in one parcel and has agreed to vacate its interest in the other upon approval to sell. Therefore, no reason to retain the parcels for highway purposes exists. MOA has identified a need to purchase Parcel A to facilitate the construction of a new fire station. This use is consistent with the designation for the area in the Chugiak-Eagle River Comprehensive Plan Update and will provide a benefit to the community.

The state does not guarantee the condition or usefulness of the subject parcels. The parcels are offered “as is” with no guarantees, expressed or implied, as to their suitability for any planned or potential use, or as to the availability of any public or private services.

Stipulations: The applicant will be required to comply with the following stipulations:

1. Within six months from the date of notice that the Department has a signed Final Finding and Decision approving the purchase of the subject parcels, the applicant must submit to the Department the following:
 - Reimbursement of the cost of publishing the Public Notice in the Chugiak-Eagle River Star. Public notice costs must be paid before the state will authorize the applicant to proceed to the next stage in the process.
2. Within six months from the date the Department has issued the notice to proceed to survey, the applicant must hire a surveyor and the surveyor must apply for Survey Instructions from the Department.
3. Within two years after issuance of the Survey Instructions, the applicant must submit a completed survey to the Department for review. The applicant must have the survey approved by the Municipality of Anchorage as set forth in the Survey Instructions, if required by municipal code.
4. Within two years from the date the Department has issued a notice to proceed to appraisal, the applicant must hire an appraiser and the appraiser must submit to the Department a completed fair market value appraisal in accordance with appraisal instructions issued by the Department.
5. Upon approval of the appraisal by the Department, a notice to proceed to purchase will be issued to the applicant. Within the time period specified in this notice, the applicant must submit to the Department the following:
 - A completed Declaration of Intent Form and \$100 document handling fee;

- Payoff amount or 5% down payment to enter into a purchase contract if the purchase price is over \$2,000.00.

If the applicant fails to complete any of the above mentioned stipulations within the time limits specified, an Amended Final Finding and Decision and further public notice may be required prior to the completion of the purchase unless the delay and extenuating circumstances are pre-approved by the Department. The effective date of the appraisal will be adjusted to the date of issuance of the Amended Final Finding and Decision. The applicant is responsible for submitting an updated appraisal and for any additional appraisal and public notice costs.

Failure on the part of the applicant to make a good faith effort to comply with the stipulations and terms of the Final Finding and Decision or an Amended Final Finding and Decision may result in the closure of the public and charitable use purchase case unless the delay and extenuating circumstances are approved in advance by the Department.

Submittal of Public Comments: Pursuant to AS 38.05.945, the public is invited to comment on the proposed action in the Preliminary Decision, waiver of reversionary interest and the related actions; the Site Specific Plan and Land Classification Order. Please submit comments regarding the Preliminary Decision, Waiver of Reversionary Interest and each related action separately. Copies of the Preliminary Decision, Waiver of Reversionary Interest and the related actions are available at the following locations:

1. Division of Mining, Land and Water, Land Sales and Contract Administration Section, 550 West 7th Avenue, Suite 640, Anchorage, AK 99501-3576;
2. The Department's Public Information Centers in Anchorage and Fairbanks, and the Southeast Land Office in Juneau;
3. The Section's website at <http://landsales.alaska.gov>;
4. By contacting Leanne Quirk by phone at (907) 269-5664, by email at leanne.quirk@alaska.gov, or by fax at (907) 269-8916.

Comments must be received in writing by the Division of Mining, Land and Water, Land Sales and Contract Administration Section, at the above address, on or before 5:00 PM Friday, September 5, 2014 in order to ensure consideration. All written timely responses will be considered. Written comments may be submitted by electronic mail, regular mail or facsimile. Contact Leanne Quirk for more information about the proposed disposal and related actions.

Only persons who submit written comments during the public notice period will be eligible to file an administrative appeal of the Final Finding and Decision.

The State is prepared to accommodate individuals with disabilities who wish to participate in this review by providing auxiliary aids, services, or special modifications.

Individuals who may need such assistance should contact the Department's Public Information Center in Anchorage between the hours of 10:00 am and 5:00 pm, Monday through Friday, at (907) 269-8400 by telephone or by TDD at (907) 269-8411, no later than Thursday, August 28, 2014.

Proposed Action Approved for Public Review:

The proposed action may be in the best interests of the state and the Preliminary Decision is hereby approved to proceed to Public Notice in accordance with AS 38.05.945.

Prepared by:



Leanne Quirk, Natural Resource Specialist II
Land Sales and Contract Administration Section
Division of Mining, Land and Water



Date of Signature

Concurred by:



Kathryn Young, Manager
Land Sales and Contract Administration Section
Division of Mining, Land and Water



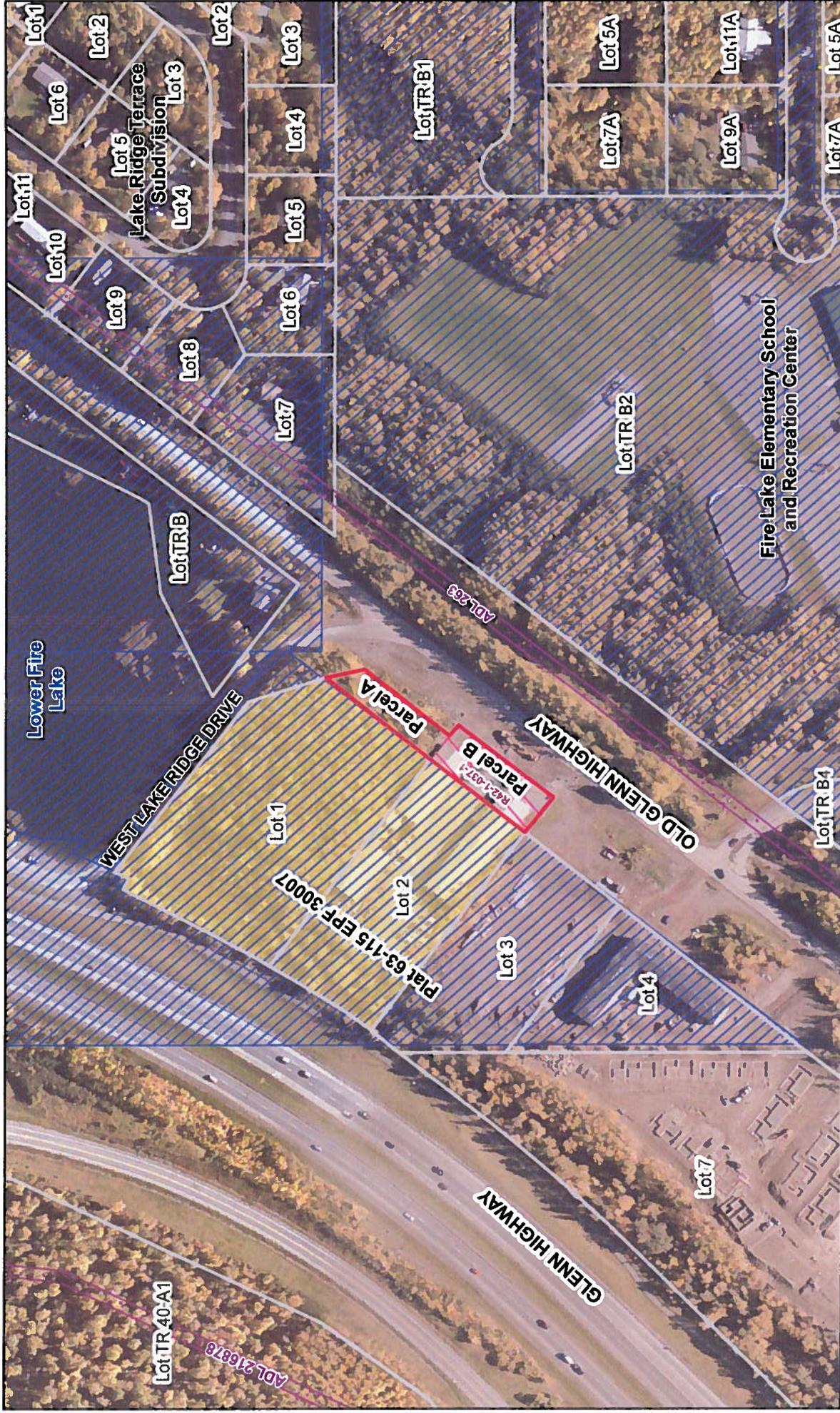
Date of Signature



Municipality of Anchorage - Chugiak Public & Charitable Use Purchase - ADL 231726

Attachment A

AS 38.05.810(a)



	ADL 231726		Utility Easement
	Easement interest vacated by DOT		Parcels
	Owned by Municipality of Anchorage		Municipal entitlement

Section 36, T15N, R2W, Seward Meridian

0 175 350 700 Feet

Map created by L. Quirk 7/16/2014.