

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

**Proposed Noncompetitive Public & Charitable Use Sale to Applicant,  
Tolsona Community Corporation**

**PRELIMINARY DECISION – AS 38.05.810(a)**

**ADL 231406**

**and**

**PROPOSED RELATED ACTION**

**Mineral Order (Closing) – AS 38.05.185**

**Proposed Action, Noncompetitive Sale:** The Department of Natural Resources (Department), Division of Mining, Land and Water (Division) has received an application to purchase state land pursuant to Alaska Statute 38.05.810(a) Public and charitable use, for an existing firehall. This proposed decision will allow the parcel, ADL 231406, to be sold through a noncompetitive sale to the applicant, Tolsona Community Corporation (TCC). The parcel is located in Tolsona along Tolsona Lake Road. The legal description for the parcel is a portion of Government Lots 2 and 3 within Section 30, Township 4 North, Range 4 West, Copper River Meridian, approximately 5 acres in size. The final acreage and legal description will be determined by survey. See Attachment A.

In order to complete the sale, the Department also proposes to close the parcel to new mineral entry by issuing a mineral order (closing).

The public is invited to comment on this Preliminary Decision of the noncompetitive sale and the proposed mineral order (closing). The deadline for comments is 5 pm on Friday, September 19, 2014; see page 11 for details on how to submit comments on this Preliminary Decision.

**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 actions consists of the following case file: ADL 231406. Also incorporated by reference are Land Classification SC-86-030, ADL 224930 (current Tolsona Community Corporation Land Use Permit for a portion of the parcel that they have applied to buy), ADL 229183

(Crosswind Trail staging easement), ADL 229765 (Copper Valley Electric Association powerline easement), ADL 225337 (Copper Valley Electric Association powerline easement), and the Copper River Basin Area Plan, adopted December 1986.

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

The proposed decision will allow this parcel to be sold through a noncompetitive sale to the applicant. This action complies with the general recommendations of the Copper River Basin Area Plan. The Department has determined that the purchase price for state land to be sold pursuant to the public and charitable use statute can be set at a portion of the cost of adjudicating the case; this cost has been set at \$3,500.00. The applicant is responsible for bearing the costs of the public notice and survey, as well as the purchase price.

AS 38.05.810(g) requires the state retain a reversionary interest in lands conveyed for a public or charitable use under AS 38.05.810(a). Accordingly, the state patent issued will contain a reversionary clause wherein title will revert to the State of Alaska should the parcel cease to be used for a public and charitable use. A draft of the reversionary clause is below:

- Pursuant to AS 38.05.810(g), if the Grantor determines that the Grantee, or the Grantee's successors in interest, has used, or are using, the property for other than public purposes the Grantor may declare a forfeiture of this conveyance and title hereby conveyed shall thereupon revert to the State of Alaska.

**Description:**

Location: The subject parcel is located north of the Glenn Highway, on the east side of Tolsona Lake Road (RST 434). The parcel is described as a portion of Government Lots 2 and 3 within Section 30, Township 4 North, Range 4 West, Copper River Meridian, approximately 5 acres in size.

Geographic Features: The subject parcel is located between Tolsona Lake Road and a small unnamed pond. The parcel is grassy with some trees, with a cleared area. Much of the land currently used by the Tolsona Fire Department was cleared and filled at some point in the past, likely at the same time that Tolsona Lake Road was filled due to

drainage issues. Land in the area is known to be wet, but the National Wetlands Inventory does not indicate any wetlands on this parcel.

Potential Flood Hazard: There are no known flood hazards on this parcel.

Municipality/Borough: The subject parcel is located within the Unorganized Borough. Tolsona is an unincorporated community.

Native Regional/Village Corporations/Councils: The Native regional corporation is Ahtna, Inc. There is no Native village corporation, nor is there a local traditional governing body for Natives in the Tolsona area.

USGS Map Coverage: The subject parcel is located on USGS Quad Gulkana A-5.

Legal Description: The unsurveyed legal description of the parcel is as a portion of Government Lots 2 and 3 within Section 30, Township 4 North, Range 4 West, Copper River Meridian, approximately 5 acres in size.

**Title:**

Acquisition Authority: Title report RPT-4083 was completed for the subject parcel and is current as of October 17, 2012. The State of Alaska received title to the subject parcel through a General Grant. The applicable State selection file is GS 1639. The federal case file is AA-4801.

Title status: This is state land conveyed by Federal Patent number 50-2011-0190 issued August 2, 2011.

Title Restrictions: The parcel is 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 lot is within the boundaries of Ahtna, Inc. There are no Native interests identified within this parcel.

School Trust Land: This is not School Trust Land.

Other Conflicts or Pending Interest: The third party interests affecting the subject parcel are the following:

- 1) A buried telephone cable line, belonging to Copper Valley Telephone Cooperative (CVTC), is depicted on the development plan for the lease (ADL 224930) dated December 20, 1997. A portion of this underground line may be located within ADL 231406. State records indicate this is an unauthorized use.
- 2) A public easement for an existing Copper Valley Electric Association overhead electrical line (ADL 225337) which provides power to the firehall crosses a portion of the parcel.
- 3) There is an above ground fuel storage tank which appears to be within the right-of-way for RST 434 and will need to be relocated. The firehall building does not appear to be within the RST right-of-way.
- 4) This parcel is within an oil and gas exploration license (ADL 392209) encompassing over 43,000 acres that was issued on 12/01/2013 to Ahtna, Inc for a period of five years.

**Background:** Tolsona Community Corporation applied June 10, 2012 as a non-profit corporation to purchase the land permitted for the Tolsona community firehall. TCC has a current DNR Land Use Permit for the operation of the existing firehall on a portion of the parcel they have applied to purchase. They had previously leased the parcel for public and charitable use (ADL 224930, recorded in the Chitina Recording District as document 1998-000098-0) from 1991 through 2008, when the lease expired. The firehall was built during the lease period and is described on the purchase application as a 20'x30' frame and metal building on a concrete slab. In 2008, a Land Use Permit was issued by DNR to authorize the continued use of the parcel. The permit was reissued in 2011 for a five year period to extend the authorization while a public and charitable use purchase application was adjudicated. TCC is authorized to use a 2.18 acre parcel under their current permit which is depicted on the development plan recorded with the aforementioned lease.

After submitting their application to purchase, TCC requested to expand the application beyond the area currently being used by the Tolsona Fire Department. They have applied to purchase additional state land to the east of the permitted parcel to the ordinary high water (OHW) of the adjacent pond and south to the northern boundary of a state parking and staging area for users of Crosswind Trail (ADL 229183, EPF 2012-

49). These extensions will allow additional parking area for volunteer firefighters and include a previously constructed French drain system that extends from the firehall east to the pond.

**Planning, Classification and Mineral Orders:**

DNR Land Use Plan: The subject parcel is located within the Copper River Basin Area Plan, Region 3, Unit 3D. The designated land use within this management unit is Settlement. The management intent states, "Isolated parcels (approximately 250 acres) of land along the highway (subunit 3D) may be offered for settlement."

Land Classification: The subject parcel was classified Settlement on December 5, 1986 under Land Classification Order SC-86-030, pursuant to the Copper River Basin Area Plan, 1986.

Alaska Coastal Issues: Not applicable to this decision.

Mineral Order: There are no mineral orders currently affecting this parcel. There is no existing mineral activity on the parcel. A mineral order (closing) will be necessary to close this parcel to mineral entry prior to sale.

Area plan management policy states that, in general, state land scheduled for disposal will be closed to mineral entry prior to sale to minimize potential conflict between land estate and mineral estate users.

Mineral orders for closure, where they have been established, close the area to exploration and development of locatable minerals such as gold, copper, platinum, etc. Mineral orders do not apply to non-locatable minerals, including oil and gas, coal, shallow gas, or exploration licensing for such, nor do they preclude reasonable surface access to these resources. However, Alaska law also provides that the surface owner will be compensated for damages resulting from mineral exploration and development (AS 38.05.130). As mentioned previously, this parcel is within an area covered by an oil and gas exploration license issued on 12/01/2013 to Ahtna, Inc for a period of five years, ADL 392209.

In accordance with 6(i) of the Alaska Statehood Act and AS 38.05.125, the state, in this decision, 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.

**Local Planning:** There is no local planning authority for the unincorporated community of Tolsona.

**Easements and Setbacks:** The parcel is located near a currently un-surveyed portion of RST 434 (Tolsona Lake Road). The proposed location of the 100' right-of-way for Tolsona Lake Road adjacent to ADL 231406 will be inclusive of the existing developed road and run along the western boundary of the parcel. For survey purposes the proposed right-of-way location is described as follows: the western boundary of the subject parcel is intended to be coincident with the eastern boundary of the adjacent portion of the RST right-of-way extending northeasterly from the northwestern-most monument depicted on EPF 2012-49, Plat 2013-6 Chitina Recording District, with an adjustment to maintain a minimum distance of 20' from the firehall. At the northern boundary of the parcel, where the 100' right-of-way meets the southern boundary of Bunsek Estates, the right-of-way is to be centered on the developed road and existing 60' right-of-way platted within Bunsek Estates. See Attachment B.

**Access:** Access to the parcel is from the Glenn Highway, via Tolsona Lake Road (RST 434).

**Access To and Along Public or Navigable Water:** The subject parcel is adjacent to a small pond. A public access easement 50 feet in width is proposed to provide an overland access route from Tolsona Lake Road to the pond, consistent with 11 AAC 51.045(f)(2)(A). This easement reservation would extend east from the Tolsona Lake Road right-of-way along the southern interior lot line of ADL 231406 and then north along the eastern interior lot line of the parcel to the ordinary high water mark of the pond. This easement is intended to provide public access from Tolsona Lake Road to the pond and discourage unauthorized access through the northern portion of the parcel which may hinder firehall operation. See Attachment B.

**Traditional Use Findings:** In accordance with AS 38.05.830 Land Disposal in the unorganized borough, a traditional use finding is required. The subject parcel is located within Unit 3D of the Copper River Basin Area Plan which is designated as Settlement and consists of state land and scattered parcels of private land. Purchase of the parcel by the Tolsona Community Corporation is intended to allow the previously established use by the Tolsona Fire Department to continue. The future use of the parcel for the operation of this public service facility is not anticipated to change greatly from the use that has occurred in recent history. Therefore, no significant changes to traditional uses of the land and resources of this area are expected as a result of the proposed action.

Information on current or traditional use of the parcel is welcomed and the public is invited to submit comments during the public comment period which will be addressed in the Final Finding and Decision. See the Submittal of Public Comments section at the end of this document for details on how to submit comment.

**Hazardous Materials and Potential Contaminants:** The Department is not aware of contamination of, or hazardous materials on, the subject parcel. 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:** Preliminary Survey Determination #2013-1 dated April 12, 2013 from the Division’s Survey Section determined the parcel to be unsurveyed. Following DNR approval of the proposed sale of the subject parcel, 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 filed in the appropriate recording district.

**Compensation/Appraisal:** An appraisal is not required. The Land Sales and Contract Administration Section has determined that the sale price for public and charitable use purchases will be based on the partial costs of adjudicating the application, which at the present time is \$3,500.00. AS 38.05.810(a) authorizes the director to sell state land for a public and charitable use at less than fair market value.

**Agency Review:** Division Review was conducted from November 6, 2012 to November 26, 2012. Statements of non-objection were received from Easements, Public Access Assertion and Defense and Municipal Entitlements. Agency review was conducted from November 30, 2012 to December 21, 2012. Statements of non-objection were received from the Mental Health Trust, the Department of Administration, and the Division of Oil and Gas. The Division of Oil and Gas requested that the applicant be made aware of

the state's mineral reservations. This language has been included in this decision as appropriate. The Department of Transportation and Public Facilities also commented that Tolsona Lake Road, as a Revised Statute 2477 Trail, is managed by DNR. It is not within the jurisdiction of DOT/PF and is not maintained by DOT/PF. DNR management of Revised Statute Trails does not include road maintenance. Comments received during the Public Notice period will be considered and addressed in the Final Finding and Decision.

**Discussion:** Tolsona Community Corporation has leased, or been permitted for the use of, a portion of ADL 231406 since 1991 for the operation of the Tolsona Fire Department facility located on the subject parcel. TCC has applied to purchase state land on which the Tolsona community firehall is located. After submitting their application to purchase, TCC requested to expand the area being applied for beyond what was described on the original purchase application. The TCC Board passed Resolution 12-5 on May 7, 2012 approving their president to apply for the purchase of additional state land to the east of the boundary described in the lease legal description to the ordinary high water (OHW) of the adjacent pond and to the south to the northern boundary of a state parking and staging area for users of Crosswind Trail (ADL 229183). ADL 229183 was surveyed and monumented as EPF 2012-49 and recorded in Chitina Recording District as Plat 2013-6 on 6/10/2013. The requested expansions will allow for additional parking area for volunteer firefighters and include a previously constructed French drain system that extends to the pond. The expanded parcel is approximately 5 acres in size.

TCC is a nonprofit corporation registered with the State of Alaska and has 501(c)(3) Federal tax exempt status. TCC has been operating the firehall as a public facility since it was built in the 1990s, thereby establishing a history of fire protection and service to the community. It is consistent with the management intent for this unit of the Copper Basin Area Plan that isolated parcels along the highway be offered for settlement. With TCC and Tolsona Fire Department both operating as volunteer nonprofit organizations, a public and charitable use sale may be their only viable option for purchasing the land for future long term use of the firehall.

The state is proposing a noncompetitive sale to TCC for public and charitable use pursuant to AS 38.05.810(a). The applicant is responsible for bearing the costs of the public notice and survey in addition to the purchase price of \$3,500.00. The state patent issued will contain a reversionary clause wherein title will revert to the State of Alaska should the parcel cease to be used for a public and charitable use.

**Alternatives:** The following alternatives were considered.

Alternative 1: Sell

Sell the parcel as proposed in this decision. If it is in the best interest of the public, AS 38.05.810(a)(3) allows a nonprofit corporation to purchase state land for the operation of a public facility. Conveyance of the parcel would provide the Tolsona area with a permanent location for their volunteer fire department. The Tolsona Fire Department serves an important need in the Tolsona area; this is the preferred alternative.

Alternative 2: Lease

Lease the parcel to the Tolsona Community Corporation for a public and charitable use. TCC previously leased the parcel and now uses the parcel under a Land Use Permit. Leasing the parcel may not generate the same amount of revenue for the state as a sale and would only provide a short term authorization for continued use of the firehall. This alternative is not preferred.

Alternative 3: Retain

The Department will take no action and retain the subject parcel. This alternative would fail to meet the applicant's need for a permanent location for their fire department. 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). Conveying this parcel into private ownership complies with the objectives of the Copper River Basin Area Plan and provides accessible, quality land for public and charitable use. The conveyance would allow the Tolsona Fire Department to continue providing a needed service in the Tolsona area and benefit local public safety.

After public notice, the subsequent review process may result in changes to the preferred alternative, or a decision to stop the action. A Final Finding and Decision will address any significant issues or concerns raised during the public review process.

The state does not guarantee the condition or usefulness of the subject parcel. The land is offered "as is" with no guarantees, expressed or implied, as to its 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 complete the following actions.

1. Within 60 days from the date of issuance of the Final Finding and Decision, the applicant must submit to the Department the following:
  - a. Reimbursement of the cost of publishing the public notice in the Copper River Record. 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 that 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 and approval.
4. Upon approval of the survey 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. A completed Declaration of Intent Form and \$100 document handling fee and
  - b. Payoff amount of \$3,500.00 or minimum 5% deposit for the issuance of a contract for sale.

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.

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 and proposed related action. Please submit comments regarding the Preliminary Decision and proposed related action separately. Copies of this Preliminary Decision and Proposed Mineral Order (Closing) may be obtained from:

1. Division of Mining, Land and Water, Land Sales and Contract Administration Section, 550 West 7<sup>th</sup> Avenue, Suite 640, Anchorage, AK 99501;
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](mailto: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, attention Leanne Quirk, at the above address, on or before 5 PM Friday, September 19, 2014 in order to ensure consideration. All written timely responses will be considered. Comments may be submitted by letter, facsimile (907.269.8916) or email ([leanne.quirk@alaska.gov](mailto:leanne.quirk@alaska.gov).)

Only persons who submit timely 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 or by TDD at (907) 269-8411 no later than Friday, September 12, 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

Recommend Approval by:



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

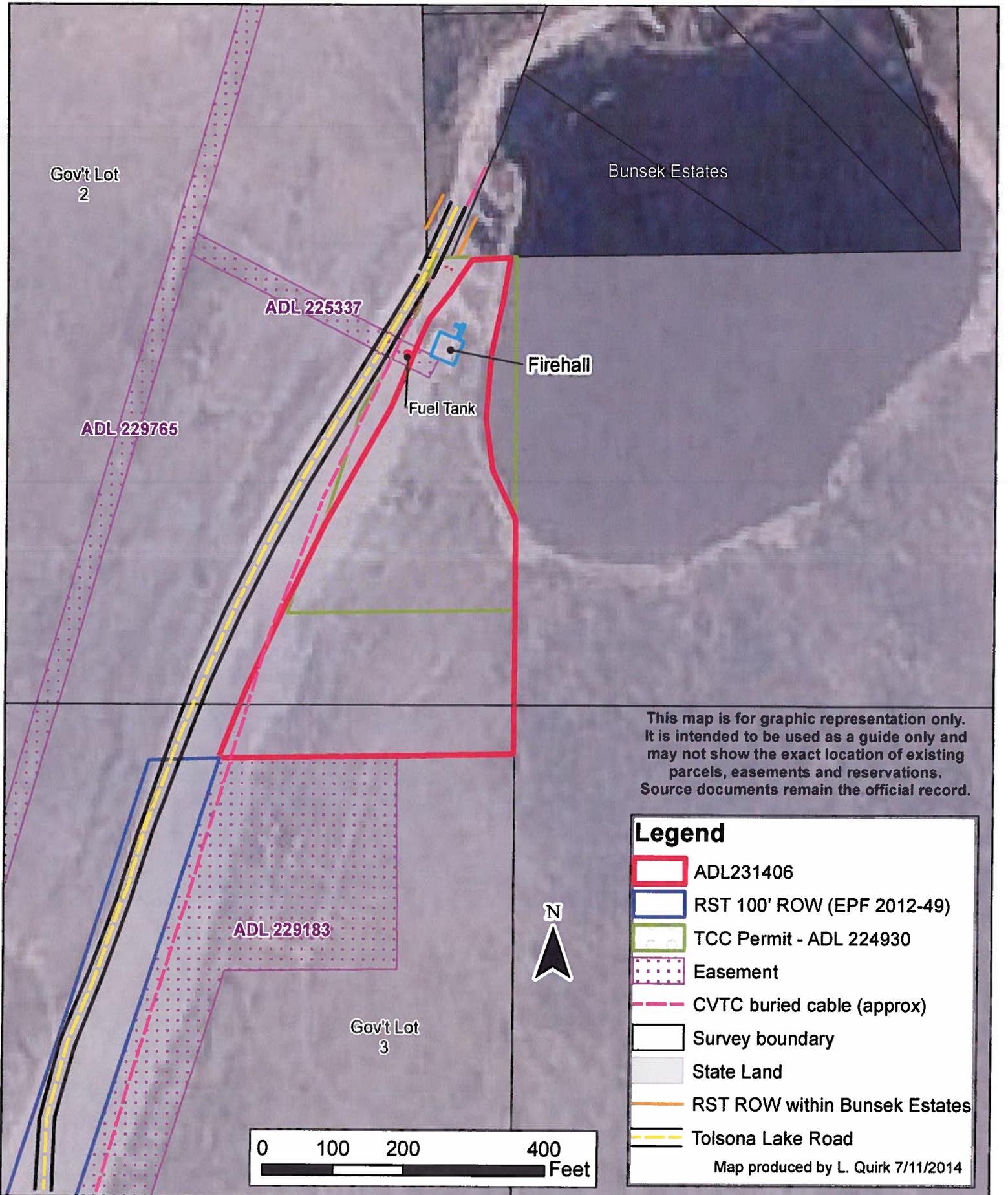


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Date of Signature



# Attachment A: ADL 231406

Tolsona Community Corporation  
Public & Charitable Use - AS 38.05.810(a)



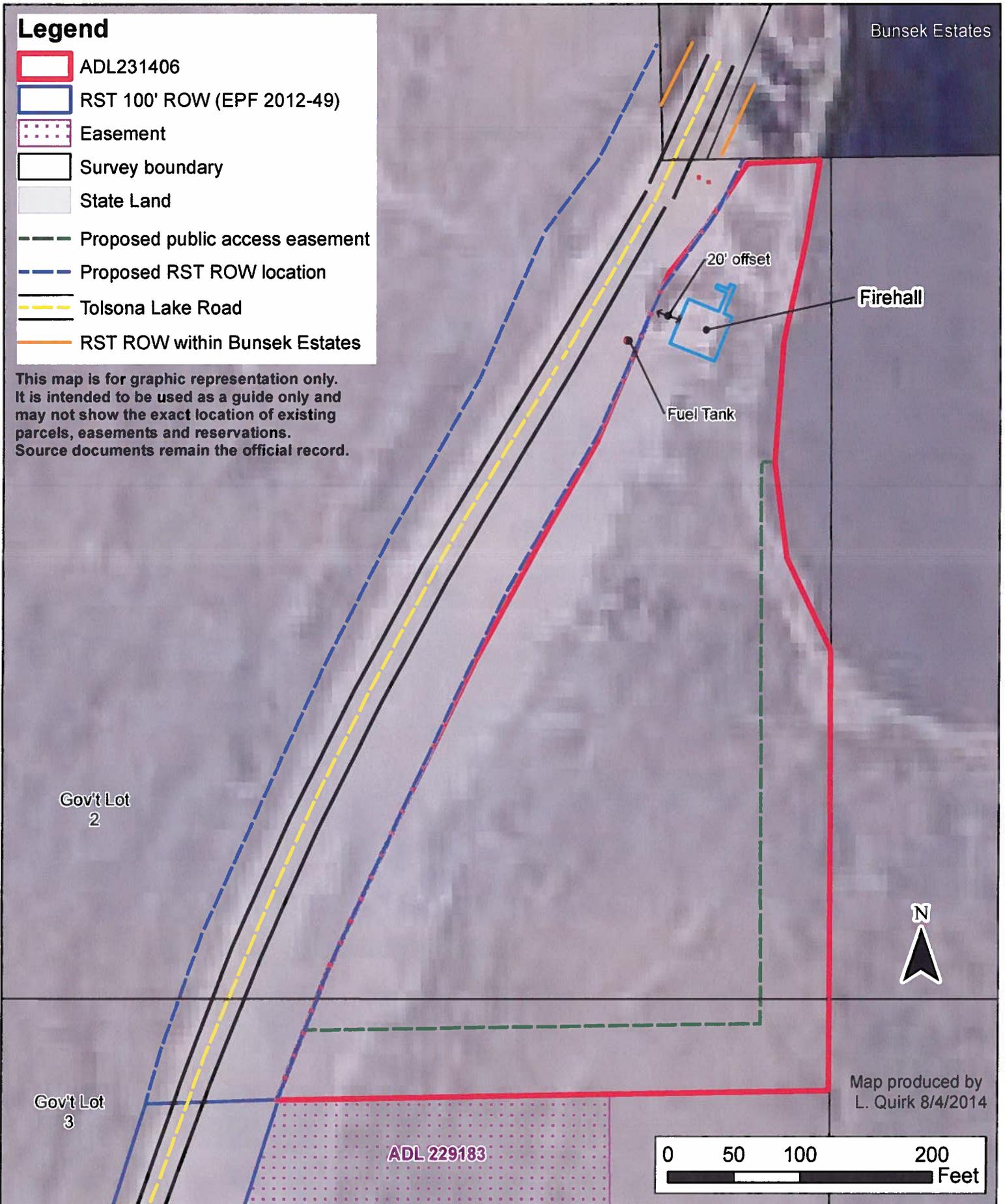
This map is for graphic representation only. It is intended to be used as a guide only and may not show the exact location of existing parcels, easements and reservations. Source documents remain the official record.



**Legend**

- ADL231406
- RST 100' ROW (EPF 2012-49)
- Easement
- Survey boundary
- State Land
- Proposed public access easement
- Proposed RST ROW location
- Tolsona Lake Road
- RST ROW within Bunsek Estates

This map is for graphic representation only. It is intended to be used as a guide only and may not show the exact location of existing parcels, easements and reservations. Source documents remain the official record.



Bunsek Estates

20' offset

Firehall

Fuel Tank

Gov't Lot 2

Gov't Lot 3

ADL 229183

Map produced by  
L. Quirk 8/4/2014

