

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

PRELIMINARY DECISION – ADL 65244

**Proposed Noncompetitive Sale to
Jon and Valerie Swanson**

**pursuant to
AS 38.05.102**

ATTACHMENTS

**A: Case map
B: Imagery map**

COMMENT PERIOD ENDS 4:00 PM FRIDAY APRIL 3, 2015

Proposed Action-Noncompetitive Sale: The Department of Natural Resources (Department), Division of Mining, Land and Water (Division), has received an application from Jon and Valerie Swanson to purchase approximately 30 acres of state land they are leasing (ADL 65244). The application was filed pursuant to AS 38.05.102 Lessee preference. The lease is a 55-year lease, originally issued August 23, 1974; it expires in 2029. The parcel of state land is located on Cohoe Loop Road near Clam Gulch in the Kenai Peninsula Borough. See Attachment A.

Proposed Related Actions: There are no related actions associated with this decision.

Comment Period: The public is invited to comment on this Preliminary Decision of the proposed noncompetitive sale. **The deadline for comments is 4:00 PM Friday, April 3, 2014.** See page 11 for information on how to submit comments.

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

AS 38.05.102. Lessee preference

Administrative Record: The administrative record for the proposed action consists of the following case file: ADL 65244. Also incorporated by reference are state conveyance files (UNIV-39 and OSL 785), LCO SC-99-002, MCO 239, and the Kenai Area Plan (adopted August 2001). Other relevant state actions include ADL 21251 (reservation of a 200-foot wide public easement for Cohoe Loop Road) and ADL 228162 (Kenai Kachemak Pipeline right-of-way lease located within ADL 21251).

Scope of the Decision: The scope of this decision is limited to determining if the applicant and the subject parcel qualify under AS 38.05.102 Lessee preference, 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 applicants (Jon and Valerie Swanson) pursuant to AS 38.05.102.

This proposed decision will allow this parcel to be sold through a noncompetitive sale to the applicants. The leased parcel contains substantial improvements, including the applicants' intended principle place of residence. This action complies with the general recommendations of the Kenai Area Plan.

Proposed Related Actions: There are no related actions required for this proposed disposal.

Description:

Location: The parcel is located in the South ½ of the Southeast ¼ of Section 10, Township 2 North, Range 12 West, Seward Meridian. The parcel is further described as located on Cohoe Loop Road west of the Sterling Highway in the Clam Gulch area of the Kenai Peninsula Borough. The street address is 20275 Cohoe Loop Road. The parcel is approximately 25 miles north of Ninilchik and approximately ¾ mile north of the southern junction of the Sterling Highway and Cohoe Loop Road on the west side of Cohoe Loop Road. See Attachment A.

Geographic Features: The parcel is approximately 30 acres in size. The improvements are located in the eastern portion of the parcel close to Cohoe Loop Road. This area is vegetated largely with spruce and birch trees. The bulk of the parcel is wetlands and not readily developable. See Attachment B.

Potential Flood Hazard: According to floodplain management area maps prepared by the Kenai Peninsula Borough the subject parcel is not within an identified flood zone. The applicable map is the Floodplain Management Areas map labeled "Kenai River below Skilak Lake/Kasilof River below Tustumena Lake".

Municipality/Borough: The subject parcel is located within the boundaries of the Kenai Peninsula Borough.

Native Regional/Village Corporations/Councils: The Native regional corporation is Cook Inlet Region, Inc. The nearest Native village corporations are Ninilchik Native Association, Inc. and Kenai Native Association, Inc. The nearest Native traditional councils are Ninilchik Traditional Council and Kenaitze Indian Tribe.

USGS Map Coverage: The applicable USGS map is Kenai B-4.

Legal Description: The legal description of the parcel contained in the lease is that portion of the South ½ of the Southeast ¼ of Section 10, Township 2 North, Range 12 West, Seward Meridian lying west of the right-of-way of Cohoe Loop Road. This is also the description used in the preliminary survey determination issued November 3, 2014. See Attachment A.

The parcel totals approximately 30 acres in size. The parcel has been determined to be unsurveyed and will be surveyed prior to disposal.

Title:

The State received title to the subject parcel under a University grant (UNIV-39). The land was conveyed by federal patent 1217603 issued on March 6, 1961. The state subsequently conveyed certain lands, including the subject parcel, to the University of Alaska pursuant to a University Settlement Agreement (QCD No. 587) on October 21, 1983; the University reconveyed those lands to the state on December 2, 1983 (OSL 785). The parcel is subject to the reservations, easements, and exceptions contained in the federal patent. Title Report #7297 was issued on October 21, 2014.

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 parcel is within the boundaries of Cook Inlet Region, Inc. There are no Native interests identified with this parcel.

School Trust Land: This is not land obtained as School Trust land.

Other Conflicts or Pending Interest: The Kenai Peninsula Borough filed a Municipal Entitlement selection in 1999 that included this parcel (ADL 227988). The borough subsequently relinquished its selection for the subject parcel on November 12, 2014. ADL 21251 was issued to the Alaska Department of Transportation and Public Facilities (DOT/PF) in 1963 for a 200-foot right-of-way for Cohoe Loop Road. The Kenai Kachemak Pipeline lease (ADL 228162) is located within the Cohoe Loop Road right-of-way in the vicinity of the subject parcel. The southern boundary of the subject parcel is coincident with a portion of the southern boundary of Section 10 along which a 33 foot wide section line easement is reserved. A portion of ADL 63002 (right-of-way permit) abuts the northwest corner of the subject parcel. There is an active oil and gas lease sale tract (LST CI0028) that includes all of Section 10, Township 2 North, Range 12 West, Seward Meridian; no tracts have been sold to date. See the Easements and Setbacks section for further discussion. There are no known conflicts identified with this parcel.

Background: The state issued a 55-year lease August 23, 1974 to John Garber. The lease was assigned several times between 1976 and 2014, when it was assigned to Jon and Valerie Swanson. The Swansons purchased the improvements on the parcel prior

to assignment of the lease to them. The Swansons currently reside in Illinois; they intend to relocate and take up residence on the parcel in May 2015.

Planning, Classification and Mineral Order:

DNR Area Plan: DNR adopted the Kenai Area Plan in August of 2001. The subject parcel is identified as Unit Number 182B in Region 6 and is designated Settlement. The statement of management intent for Unit 182B acknowledges that state lands under lease or subject to a preference right application are designated Settlement where conveyance is desirable and private ownership is the most reasonable use.

See the Land Classification section below for further discussion.

Land Classification: The state classified the subject parcel as Utility on November 28, 1962 (CL 135). Pursuant to the Kenai Area Plan, Land Classification Order SC-99-002 was issued January 7, 2000. Land Classification Order SC-99-002 superseded CL 135 and classified the subject parcel Settlement.

Coastal Issues: The subject lot is located within the Kenai Peninsula Borough coastal management district. The department will notify the Kenai Peninsula Borough coastal management program of this proposed action.

Mineral Order: The subject parcel has been previously closed to mineral entry by Mineral Closing Order 239 issued on April 20, 1982.

Area wide subsurface management policy states in general parcels scheduled for disposal will be closed to mineral entry prior to sale to minimize potential conflict between surface and subsurface 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).

In accordance with Section 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: The Kenai Peninsula Borough Comprehensive Plan, adopted in June of 2005, establishes goals, objectives and policies for guiding development in the borough to ensure development occurs in a manner beneficial to borough residents.

The section of the plan that addresses state lands stresses the importance of cooperative planning. The borough will be afforded an opportunity to review and comment on this proposed disposal. Specific parcels of state land are not addressed.

Easements and Setbacks:

DNR issued a public easement to the Alaska Department of Transportation and Public Facilities in 1963 for a Secondary Federal Aid Highway project (ADL 21251). This project was the Cohoe Loop Road in Sections 10 and 15 in T2N, R12W, SM; the permit was for a 200-foot right-of-way, 100 feet either side of centerline. The subject parcel fronts on Cohoe Loop Road along its entire eastern boundary which will be coincident with the western boundary of ADL 21251.

The Kenai Kachemak Pipeline lease (ADL 228162) is located within the Cohoe Loop Road right-of-way in the vicinity of the subject parcel. According to EPF 2007-04, record of survey for the Kenai-Kachemak Pipeline Kasilof Extension, the portion of the pipeline right-of-way adjacent to the subject parcel is located east of the centerline of Cohoe Loop Road and does not affect the parcel.

The southern boundary of the subject parcel is coincident with the section line common to sections 10 and 15. Kenai Peninsula Borough mapping resources show that Kotik Avenue extends westerly from Cohoe Loop Road along the southern boundary of the subject parcel. Kotik Avenue appears in available imagery to be a gravel road. State records do not show that an ADL easement has been issued for this road. Research indicates ADL 65244 will be subject to a section line easement 33 feet in width along its southern boundary.

ADL 63002 is a right-of-way permit for public access and utility easements of varying widths issued December 29, 1973. A portion of ADL 63002 which occupies the east fifty feet of the N1/2SW1/4 of Section 10 abuts the northwest corner of the subject parcel. No portion of this right-of-way is located within the subject parcel.

See Attachment A map.

Access: Access to the subject parcel is by Cohoe Loop Road.

Access To and Along Public or Navigable Water: The subject parcel is not adjacent to a public or navigable body of water.

Traditional Use Findings: A traditional use finding is not necessary because the subject parcel is located within an organized borough. However, comments regarding use of state-owned land in the area that are submitted during the public comment period are welcome and will be addressed in the subsequent Final Finding and Decision.

Reservation of Mineral Estate: In accordance with Section 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.

Hazardous Materials and Potential Contaminants: There is no known 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, expressed 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 #2014-08 dated November 3, 2014 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 the local platting jurisdiction (Kenai Peninsula Borough) and filed in the appropriate recording district.

Compensation/Appraisal: AS 38.05.840(a) states, “Land may not be sold or leased for less than the approved, appraised market value...” 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. At the appropriate time, the Division will notify the applicant to begin the appraisal process and make available a list of approved appraisers. The DNR Appraisal Unit will provide appraisal instructions to an approved appraiser and must review and approve the appraisal. The applicant bears the cost of the appraisal.

Division and Agency Review: Division Review was conducted from November 6, 2014 through November 19, 2014. The Easements Unit had no objection to the proposed sale and confirmed the location of ADL 63002 and that it does not affect the subject parcel. The Mining Section submitted a Mineral Property Management Review which confirmed that the area is closed to mineral entry and there is no significant mineral development potential and no active mining claims in the area.

Agency review was conducted from November 6, 2014 through November 19, 2014. The Office of History and Archaeology indicated that there are no known cultural resource sites within the proposed sale. The Division of Oil and Gas (DOG) confirmed that LST CI0028 still affects the subject parcel. DOG indicated there is not currently an active lease on the area but the tract will likely be offered again in Spring 2015. DOG also recommended that the applicant be made aware of State reservations of mineral resources and the State's right to enter the land for exploration, development and production. Division of Geological and Geophysical Surveys (DGGS) submitted general comments regarding the coal, oil and gas resources present in the area. DGGS also indicated that standard best building practices should be used to accommodate the region's general seismic hazard. No metallic mineral occurrences were identified in the vicinity of the subject parcel. DGGS had no objection to the proposed sale. Alaska Department of Fish and Game (DF&G) commented that the parcel contains kettle wetlands and a pond which may contain fish and advises the applicants to contact DF&G, Division of Habitat, prior to any construction below the ordinary high water of a water body on the property to verify presence or absence of fish. Department of Transportation and Public Facilities (DOT/PF) had no objection to the proposed sale but indicated the need for the applicant to apply for a driveway permit to access Cohoe Loop Road. The Cohoe Loop Road right-of-way will be retained in State ownership with the subject parcel's eastern boundary being coincident with the western boundary of the road right-of-way. State Pipeline Coordinator's Office (SPCO) had no concerns about the proposed sale but requested that the applicant be informed that the Kenai Kachemak Pipeline right-of-way (ADL 228162) is located in the vicinity of the parcel and that it be excluded from the conveyance. ADL 228162 is located within the Cohoe Loop Road right-of-way in the vicinity of the subject parcel, according to EPF 20070004. As mentioned above, the Cohoe Loop Road right-of-way will be retained in State ownership.

Alternatives: The following alternatives were considered.

Alternative 1 (Preferred): Sell

Offer the subject parcel for disposal as proposed in this decision. If determined to be in the best interest of the State, AS 38.05.102 allows a qualified applicant to purchase State land if the relevant statutory requirements are met. The Swansons are the lessees in good standing of the subject parcel. Conveying this parcel out of state ownership into private ownership is in keeping with the management intent of the Kenai Area Plan. The applicants have a substantial investment in the subject parcel and intend to reside there upon relocating to Alaska. The research and analysis performed in this decision fully support the preferred alternative to sell the subject parcel to the applicants.

Alternative 1 is the preferred alternative.

Alternative 2: Do Not Sell, Continue to Lease

The Department will take no action, retain the subject parcel and continue the lease until its expiration unless extenuating circumstances warrant otherwise. The State would need to expend resources managing the lease until its expiration in 2029, while forgoing the income that could have been generated by a sale. Selling the parcel is in keeping with the Kenai Area Plan. Conveying the parcel to the applicants serves a higher purpose than retention in state ownership as the applicant has demonstrated a greater need for the land than the state and has satisfied the statutory requirements. No objections or significant issues were raised during adjudication of the application that would preclude the sale. There is no valid reason for the state to retain ownership of the subject parcel.

Retaining the subject parcel 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 38.05.102. Alternative 1 provides accessible, quality land for private ownership. The proposed action is consistent with the Kenai Area Plan and will generate revenue for the State.

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 lot. The lot 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 comply with the following stipulations if a decision approving the sale is issued:

1. Upon issuance of a Final Finding and Decision approving the sale of the subject parcel, and if no appeal is filed, the Department will issue a notice to proceed to survey. Within six months from the date of the notice to proceed to survey, the applicant must hire a surveyor and the surveyor must apply for Survey Instructions from the Department.
2. 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 Kenai Peninsula Borough as set forth in the Survey Instructions.
3. Upon approval of the survey, the Department will issue a notice to proceed to appraisal. Within two years from the date of the 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.

4. 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:
 - o A completed Declaration of Intent Form and \$100 document handling fee;
 - o Notarized Relinquishment of Land Lease; and
 - o Payoff amount or minimum 5% deposit for the issuance of a contract for sale
5. Prior to conversion to purchase and lease relinquishment, the applicant must remain in good standing with respect to all terms of the lease, including lease payments, late fees, and municipal or borough taxes if any. If the applicant enters into a Contract for the Sale of Real Property the applicant must remain in compliance with all terms of that contract throughout its term. The lessee/purchaser must also remain in compliance with all applicable state and local ordinances and regulations during both the lease and/or contract. Failure to do so may result in termination of the lease and/or 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. 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.

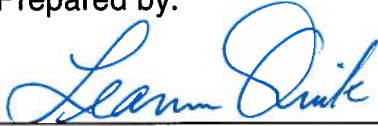
If the applicant assigns the lease prior to entering into a Contract for the Sale of Real Property, the new lessee is required to comply with all the terms and stipulations of the Final Finding and Decision or an Amended Final Finding and Decision. The new lessee will be required to submit an amended application in order to continue with the purchase of the subject parcel.

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 preference right purchase case unless the delay and extenuating circumstances are approved in advance by the Department.

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 and the state may proceed to Public Notice in accordance with AS 38.05.945.

Prepared by:

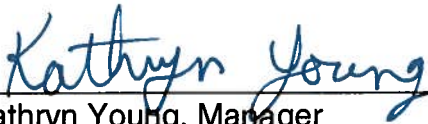


Leanne Quirk
Land Sales and Contract Administration Section
Division of Mining, Land and Water



Date of Signature

Recommend approval by:



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



Date of Signature

Submittal of Public Comments: Pursuant to AS 38.05.945, the public is invited to comment on the Preliminary Decision. Copies of the Preliminary Decision 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;
2. The Department's Public Information Centers in Anchorage and Fairbanks, and the Southeast Land Office in Juneau;
3. The Department's website at www.dnr.alaska.gov/mlw/landsale/;
4. By contacting Leanne Quirk by phone at (907) 269-5664 or by email at leanne.quirk@alaska.gov (February 27 – March 24); Ed Busch by phone at (907) 269-8469 or by email at edward.busch@alaska.gov (March 25 – April 3) or by fax at (907) 269-8916.

Comments on this Preliminary Decision must be received in writing by the Division of Mining, Land and Water, Land Sales and Contract Administration Section, attention Leanne Quirk or Ed Busch at the above address, on or before 4:00 PM Friday, April 3, 2015 in order to ensure consideration. Comments may be submitted by electronic mail, regular mail or facsimile. All written timely responses will be considered.

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.

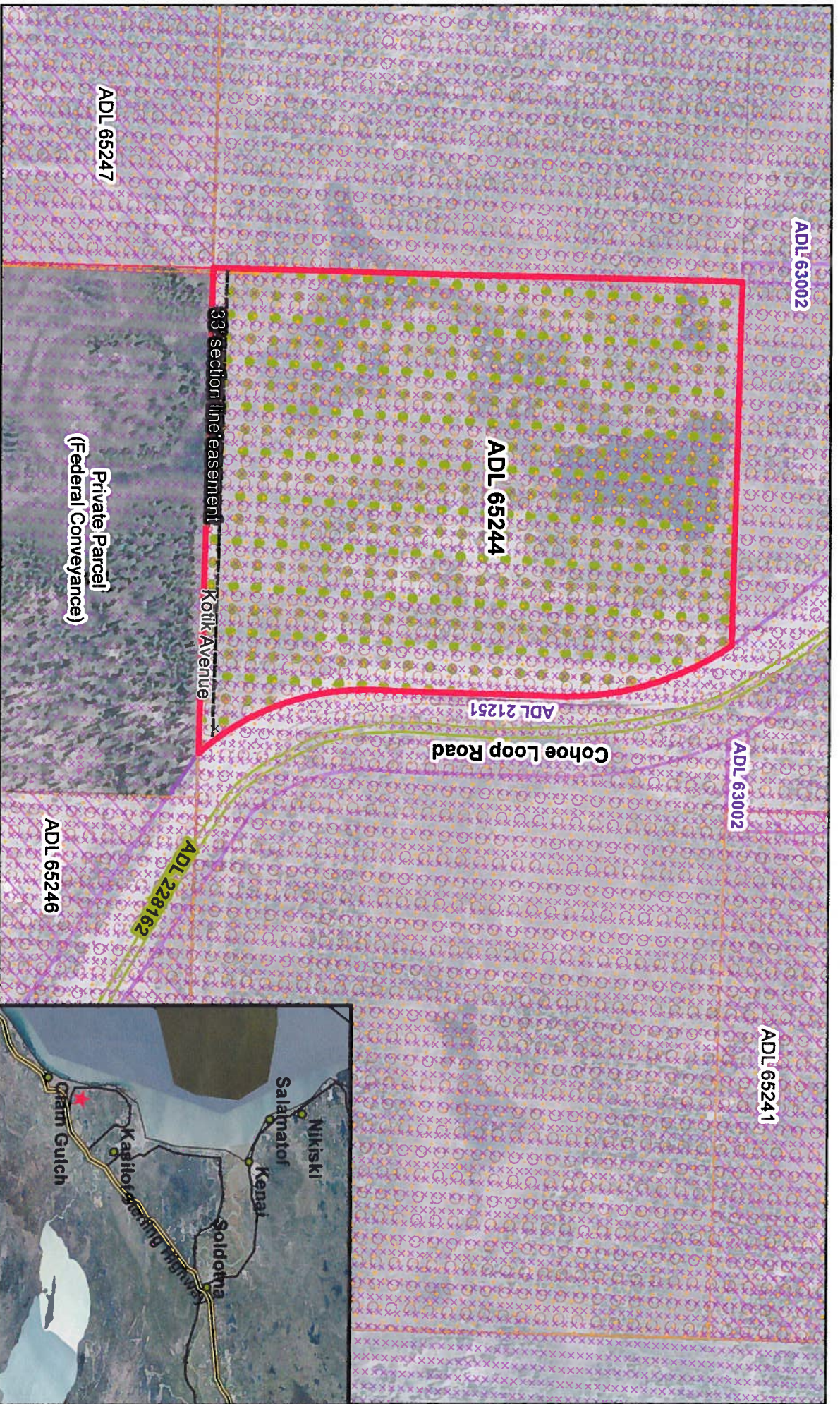
The State is prepared to accommodate individuals with disabilities who wish to participate in this review by providing auxiliary aids, services, or special modifications. Individuals who may need such assistance should contact the Department's Public Information Center in Anchorage between the hours of 10:00 am and 5:00 pm, Monday through Friday, by telephone at (907) 269-8400 or by TDD at (907) 269-8411 no later than March 26, 2015.




Jon and Valerie Swanson / Lessee Preference Purchase - ADL 65244

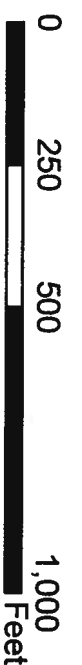
Attachment A

AS 38.05.102



-  ADL 65244
-  LST C10028
-  33' section line easement
-  Mineral Order
-  Lease
-  Easement
-  University Settlement Agreement
-  State Land

 Private Parcel (State Conveyance)



Map created by L. Quirk 10/30/2014. Revised by L. Quirk 2/23/2015. N



Jon and Valerie Swanson / Lessee Preference Purchase - ADL 65244

Attachment B

AS 38.05.102



Section 10, T2N, R12W, Seward Meridian

This map is for graphic representation only. It is intended to be used as a guide and may not depict the exact location of all parcels, easements and reservations relative to the aerial imagery.

ADL 65244

ADL 228162

Easement

33' section line easement

Map created by L. Quirk 2/23/2015

