

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

Preliminary Decision

**Proposed Change in Method of Conveyance, Development Requirement,
And Legal Description For Future Sale Of
Northern Region Agriculture Parcel
ADL 407096
AS 38.05.035(e)**

I. Proposed Action:

The Department of Natural Resources (DNR), Division of Agriculture (DAg) in cooperation with the Division of Mining, Land, and Water (DMLW) proposes to amend a previously issued Final Finding and Decision to change the parcel size, method of disposal, and development requirements for the purpose of reoffering one agricultural parcel in the Salcha area approximately one mile west of Richardson Highway milepost 322 on “County Road”, totaling 100 acres. The parcel is located in the E1/2SE1/4, S1/2SE1/4NE1/4 of section 28, Township 5 South, Range 4 East, Fairbanks Meridian. If this proposed action is approved, the parcel may be offered as part of a future Agricultural Land auction. This decision serves as an amendment, update, and complement to Final Finding and Decision for Auction #457 signed 12/8/2008.

The previously issued Final Finding and Decision and the proposed amendments are:

- A) **Amending Final Finding and Decision for Auction #457** Signed December 8, 2008
1. Change legal description and development requirement to reflect current parcel configuration
 2. Change disposal method from outcry auction to sealed bid auction

All land sold will be subject to perpetual agriculture covenants per AS 38.05.321. The minimum bid for the parcel will be set at the appraised fair market value. Bidders will be required to provide a deposit of no less than 5% of their bid amount. The state will refund the deposit to unsuccessful bidders.

Attachment A: Parcel Map

Attachment B: Public Notice

Attachment C: Conditions and Reservations which will attach to the parcel.

The public is invited to comment on this Preliminary Decision. The deadline for submitting comments is July 1, 2013; see Section **VI. Public Notice** for details on how and where to send comments.

II. Authority:

The Department of Natural Resources has the authority under Alaska Statute 38.05.035(e) to sell state land for private ownership if determined to be in the best interest of the state.

Alaska Statute (AS) 38.04.005 – Public and Private Land Use Policy,

AS 38.05.035 – Powers and Duties of the Director,

AS 38.05.045 – General Provisions for the Sale of State Land,

AS 38.05.050 – Disposal of Land for Private Ownership,

AS 38.05.055 – Procedures for Sale by Auction,
AS 38.05.321 – Restrictions of Disposal of Agricultural Land,
AS 38.05.945 – Requirement for Notice

III. **Administrative Record:**

The original project files associated with Auction #457 and the individual file for ADL 407096 constitute the administrative record in this case. Also incorporated by reference is the Tanana Basin Area Plan (TBAP), updated 1991.

IV. **Scope:**

The scope of this decision is limited to DNR's proposed decision to amend a Final Finding and Decision, (Auction #457 signed December 8, 2008) for the purpose of changing the method of conveyance, development requirement, and legal description to prepare for disposal an agricultural parcel described in the legal description section of this document. Agricultural parcels offered for sale by DNR are subject to agricultural covenants as per AS 38.05.321. Parcel may be subject to a clearing requirement. The amount of clearing required, if any, will be listed in the sales brochure.

V. **Description**

Location:

Geographic:

The parcel is located in the Northern Region approximately 35 miles southeast of Fairbanks just over one mile west of Milepost 322 Richardson Highway on Country Road.

Municipality:

The parcel is within the Fairbanks North Star Borough.

Native Region Corporations:

The project area is located within the Doyon, Ltd. Native Regional Corporation and Tanana Chiefs Conference boundary.

USGS Map Coverage:

Salcha: ADL 407096 is within Big Delta B-6 Quadrangle, scale =1:63,360

Legal Description:

ADL 407096: *Township 5 South, Range 4 East, Fairbanks Meridian*
Section 28: E1/2SE1/4, S1/2SE1/4NE1/4. 100 Acres

Clearing and Development Requirements:

Clearing and development requirements will be based on 25% of cropland as defined below.

For the purpose of determining required development "Cropland" is defined as land that:

- after being cleared is capable of producing, at a minimum, such commercial crops as grasses for seed, grain for cereal, or frost hardy vegetables;
- is arable and at least 97 percent free of surface stoniness (stones greater than three inches); with slopes less than 12 percent;

- has mineral soil depths over aggregate or sand measuring at least 10”;
- is capable of draining satisfactorily following conversion to farm land;
- not subject to frequent flooding.

Land Title:

ADL 407096 – Information obtained from Title Report #4128. Current as of 12/13/2012.

Acquired under Statehood entitlement:

Mental Health Grant – Granted for the support of the Mental Health Program. The State Received Patent for the land and mineral estate under this entitlement on 12/3/63. The Patent Number is 1234301. The applicable state case file is MH-100. The land was re-designated general grant land pursuant to Chapter 6 and 7, Chapter 1, SSSLA 1994.

Background

The parcel has been offered in previous agriculture auctions.

ADL 407096 was originally 140 acres with 100 acres in section 28 and 40 acres in section 27, T5S, R4E, F.M. and was sold in that configuration in Agricultural Lottery #7 in 1981. The parcel was subsequently relinquished in 1994. This 140-acre parcel was reoffered in Agricultural Auction #430 in 2003 and no bids were received. In 2009 DMLW and DA_g agreed to new procedures regarding the selling of agricultural land composed of multiple surveyed lots. The new procedure does away with selling parcels that contained multiple lots. Because ADL 407096 was a single parcel with a section line easement running through it, it was considered to be composed of two surveyed lots and as such could not be sold in that configuration based on the new procedure. A decision was made by DMLW and DA_g to create two separate parcels out of the existing parcel by dividing it along the section line. A Final Finding and Decision had already been signed that referenced the 140-acre parcel but the Division of Mining, Land and Water – Land Sale and Contract Administration Section Chief determined that dividing the parcel along the section line easement and selling it as two separate parcels was a “minor and technical” change and an amendment to the Final Finding and Decision was not necessary. The 100-acres in section 28 retained the original ADL number, 407096, and the 40 acres in section 27 became ADL 418836. Both parcels were reoffered in Auction #457 in 2010 via outcry auction. Each parcel received bids however the apparent high bidder for ADL 407096 never returned his contact and his application was terminated on April 16, 2012 and listed as a potential reoffer a week later. This parcel is the subject of the current preliminary decision.

Planning and Classification:

Land use Area Plan and Classification:

ADL 407096 was private land when TBAP was adopted originally adopted in 1985 and amended in 1991 and therefore was not classified in TBAP. The land was classified “agriculture” via Land Classification Order No. 90-002-A52, signed by the Commissioner of DNR on December 8, 2008. TBAP was amended, TBAP Plan Amendment No. 90-002-A51 (signed December 8, 2008), to designate the land for agriculture use and add management intent language stating that the land is appropriate for agriculture use and disposal.

Municipal Zoning and Comprehensive Plans:

The parcel is within the Fairbanks North Star Borough and is subject to local zoning and land use regulations. This parcel is currently zoned General Use (GU-1), (any use except for correctional facilities). For a current list of permitted and conditional uses please refer to FNSB Title 18, Chapter 18.44.

Traditional Use Finding (AS 38.05.830):

The parcel is within the Fairbanks North Star Borough and thus does not require a traditional use finding. Traditional use is not thought to be a significant consideration for this parcel based on the fact that it has been in and out of private hands since 1980 and is surrounded by private lands.

Access:

Access to and Beyond:

Legal access is via section line easement, which has a trail for most of its length. However, alternative practical access would be from a constructed road, called Country Road on borough maps, from the Richardson Highway straight to the parcel. The road has been used for several decades but the status of reserved access along this road has not been determined. A potential purchaser would need to research this information in order to determine the status of this alternative route.

Waters Determined Public or Navigable:

No public or navigable waterbodies are present within this parcel.

Access to and Along Public Water (AS 38.05.127, 11 AAC 51.035, 11 AAC 51.045):

No public or navigable waterbodies are present within this parcel.

Easements and Setbacks:

Parcel subject to 50' section line easements and 50' public access and utility easements along lot lines where section line easements are not present.

There will be a 60' public access easement centered along Country Road where it crosses the parcel.

Mineral Closing Order:

ADL 407096 was closed to mineral entry by Mineral Order 1097, signed December 8, 2008.

Mineral closing orders, where they have been established, close the area to exploration and development of locatable minerals such as gold, copper, platinum, etc. Mineral closing orders do not apply to oil and gas leasing, coal leasing, shallow gas leasing, or exploration licensing, nor do they preclude reasonable surface access to these resources.

Environmental Risk Assessment:

During numerous fields visits DAG staff did not observe any hazardous wastes, spills, or other potential contaminants on the parcel. Interested parties are encouraged to inspect the property and familiarize themselves with the condition and quality of the land. There are no known environmental hazards present within the project area, however, the State makes no representations and no warranties, express nor 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 of the site should such substances eventually be found.

Potential risks associated with transfer of vacant public land into private hands for potential development include, but are not limited to, potential surface and groundwater contamination, increased risk of soil pollution, and increased risk of erosion. Many of the activities increasing these potential risks are regulated by other agencies, such as regulation of septic system installation and pesticide/herbicide use by the Alaska Department of Environmental Conservation, however, the Department of Natural Resources

cannot guarantee private landowners will comply with these regulations and standards, nor can the Department guarantee the new landowners will follow any best management practices that may apply to activities performed upon their property. The risks are not project specific; rather they are present whenever vacant land is developed. This parcel will, however, be subject to a State Farm Conservation Plan, which must be approved by DA_g before a contract will be issued. The State Farm Conservation Plan is generally the result of the landowner working closely with the Natural Resource Conservation Service and/or the local soil and water conservation district and is designed to help protect the land from unwise land practices.

The Department recognizes there are environmental risks associated with the potential development when vacant public land is transferred into private ownership. However these risks are present any time vacant land is developed regardless of who the owner is and how title to the land was acquired. Given that this land was specifically designated “agriculture” to allow for transfer into private ownership and development, and the high degree of interest from both the legislature and citizens in transferring state land into private ownership, the Department is of the opinion that the benefits outweigh the risks.

Survey:

The parcel is considered surveyed by the Survey Unit within the Alaska Department of Natural Resources, Division of Mining, Land, and Water according to the survey map approved by the U.S. Surveyor General’s Office in Juneau, Alaska on May 24, 1922. Confirmation of its survey status was contained in a memo from Ken Cassity (Land Surveyor I), thru Gerald Jennings (Statewide Platting Supervisor), dated May 24 2007.

Appraisal:

An appraisal report establishing the fair market value will be completed prior to the sale.

State Agency Comments:

A request for state agency comments was send out December 7, 2012

1. DNR, DMLW, Land Sales and Contract Administration Section

No objection to proposed reoffer
Response: Thank you for your comment

2. DNR, DMLW, Water Section

Water Section has no objection to this proposal.
Response: Thank you for your Comment

3. Alaska Department of Fish and Game

Has no objection to the proposed action.
Response: Thank you for your Comment

4. DNR, AK Gas Pipeline Project Office

Does the project fall within any of the gas pipeline right-of-ways
Response: The parcel is outside of the gas pipeline right-of-ways

5. DNR, Division of Forestry

Will buyers have timber rights to utilize/sell timber on the parcel? Necessary permits should be acquired prior to any burning.

Response: Buyers have the right to dispose of timber in order to bring the land into production but cannot clear timber from land and not put that land into agricultural production. Language concerning the requirement to obtain the necessary permits prior to burning will be included in the buyer’s contract and in the brochure

Other Agencies: The following agencies or groups were included in agency review, but did not submit comments:

- Department of Environmental Conservation (DEC)
- Department of Natural Resources (DNR)
 - Office of History and Archaeology
 - Mental Health Trust Land Office (MHTLO)
 - Division of Mining, Land, and Water (DMLW)
 - Mining Section
 - Public Access Assertion & Defense (PAAD)
 - Resource Assessment and Development Section (RADS)
 - Realty Services (RSS)
 - Southcentral Region Office (SCRO)
 - Northern Region Office (NRO)
- Delta Soil and Water Conservation District
- U.S. Army Corp of Engineers
- Fairbanks North Star Borough

VI. Public Notice:

Please see Attachment B: Public Notice for specific dates and conditions.

Pursuant to AS 38.05.945, the public is invited to comment on this Preliminary Finding and Decision, which proposes to sell agricultural land in the Northern Region.

The notice will also be posted on the State of Alaska Public Notice web page at

<http://www.dnr.alaska.gov/pic/pubnotfrm.htm> and in conspicuous locations near the project area.

Pursuant to AS 38.05.946, a municipality or corporation statutorily entitled to receive notice under AS 38.05.945, may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the commissioner (or a representative) shall attend the hearing. The commissioner has discretion whether to hold a separate public hearing.

DNR DA_g will consider all timely written comments. If timely public comments received in response to this notice indicate the need for significant changes in the above decision, additional public notice for the affected decision will be given. Deleting portions of the project area or making minor changes to the proposed lot numbers will not be considered a significant change requiring public notice. If no significant change is required, the preliminary decision, including any deletions, minor changes, and a summary of public comments and Division responses, will be issued as the Final Finding and Decision of the Department of Natural Resources without further notice. **Only persons from whom the Department receives timely, written comments during the identified comment period will be eligible to file an appeal of the Final Finding and Decision.** A copy of the final decision, or the web access address, will be sent to any person who made timely written comments on the preliminary decision. Upon approval the Final Finding and Decision will be available at <http://dnr.alaska.gov/mlw/landsale>. The Final Finding and Decision will set out the applicable process for appealing the decision under AS 38.05.035(i)-(m).

If you have any questions concerning this proposed action, please contact Dan Proulx at (907) 374-3716, E-mail: Dan.Proulx@alaska.gov or fax (907) 328-1951.

Individuals with disabilities who may need auxiliary aids, services, or special modification should contact the Fairbanks Public Information Center between the hours of 10:00 a.m. and 5:00 p.m. M-F at (907) 451-2705, e-mail: fbx-pic@alaska.gov, TDD: (907) 451-2770.

VII. Alternatives:

The following alternatives were considered:

1. Do not offer the parcel at this time and retain the land in public ownership.

This option is not preferred because there is a demand for farm land in Alaska and this parcel holds no special qualities meriting retention in public ownership and does not advance the state's goal of making lands available for private ownership.

2. Offer the land for sale through another land disposal program or offer as a lease.

This option is not preferred because:

- a. TBAP states that if the land is suitable for Agriculture, it should be offered as such.
 - b. If offered through a subdivision sale the land would have to be reclassified as settlement. If reclassified the land would lose the agriculture covenants presently attached to them. One of DNR's goals is to protect the scarce agriculture land available in Alaska to allow the industry to flourish.
 - c. A lease of suitable agricultural land would not serve the states interest in putting state land into private ownership. Farmers are also more likely to expend the capital required to develop the agricultural potential if they own it versus leasing it.
3. Offer the parcel for sale subject to perpetual covenants running with the land that restricts or limits the use of the lands for agricultural purposes in an outcry auction.

Having an outcry auction reduces the pool of potential bidders to those able to be in one location at a particular time. Unlike other land sale programs offered by DNR the agriculture land sale program can sell to non-Alaska residents during the initial auction. In the past this has greatly enhances the value of the land being offered because more bids are received. This advantage would be negated if people had to fly to Alaska to participate in the auction resulting in fewer bids being received. Having an outcry auction would likely reduce the return to the state and for that reason should be rejected as an option.

4. Offer the parcel for sale subject to perpetual covenants running with the land that restricts or limits the use of the lands for agricultural purposes in a sealed bid auction.

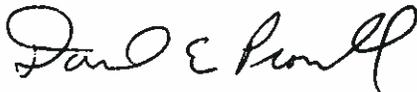
This is the preferred option because it meets the management intent of the TBAP that states if land is suitable for agriculture and classified as such, the best interest would be served by using it for agriculture and meets the State's goal of conveying state land into private ownership. This option serves to promote the agriculture industry in the state and the interest of the citizens by protecting the limited agricultural land in Alaska, allowing it to be used, now and in the future, to produce more local food products and thereby reducing dependence of imported foodstuffs. The return to the state would be higher because the pool of potential bidders would be greater if people all across the country could bid online instead of having come to Alaska just for an outcry auction.

VIII. Recommendation:

The Division of Agriculture recommends that the Final Findings and Decision for Auction #457, signed December 8th, 2008, be amended as outlined above and offered for sale at a sealed bid auction with a 25% development requirement being tied to the total number of cropland acres on the parcel as identified at the time of the sale. The parcel would be subject to additional conditions including those shown in Attachment C.

The proposed action is consistent with the overall management intent for state land and is in the state's best interest. By offering the proposed project area at a sealed bid auction, the state can provide for the opportunity for private ownership of Alaska land, generate revenue for the state, and fulfill the DAG mission to support the agricultural industry in Alaska. It is recommended that the disposal of the proposed project area described above be approved and offered for public sealed bid auction.

Prepared by;

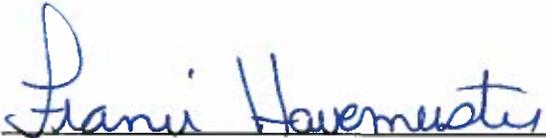


Daniel Proulx, Natural Resource Specialist II
Division of Agriculture

March 22, 2013

Date

I concur with the proposed action;



Franci Havemeister, Director
Division of Agriculture

5-22-2013

Date

IX. Best Interest Finding

The proposal is consistent with the overall management intent for the state land for this area. Changes to public resources and the public interest as a result of the proposal are acceptable. I find that the proposed action may be in the state's best interest and it is hereby approved to proceed to public notice.



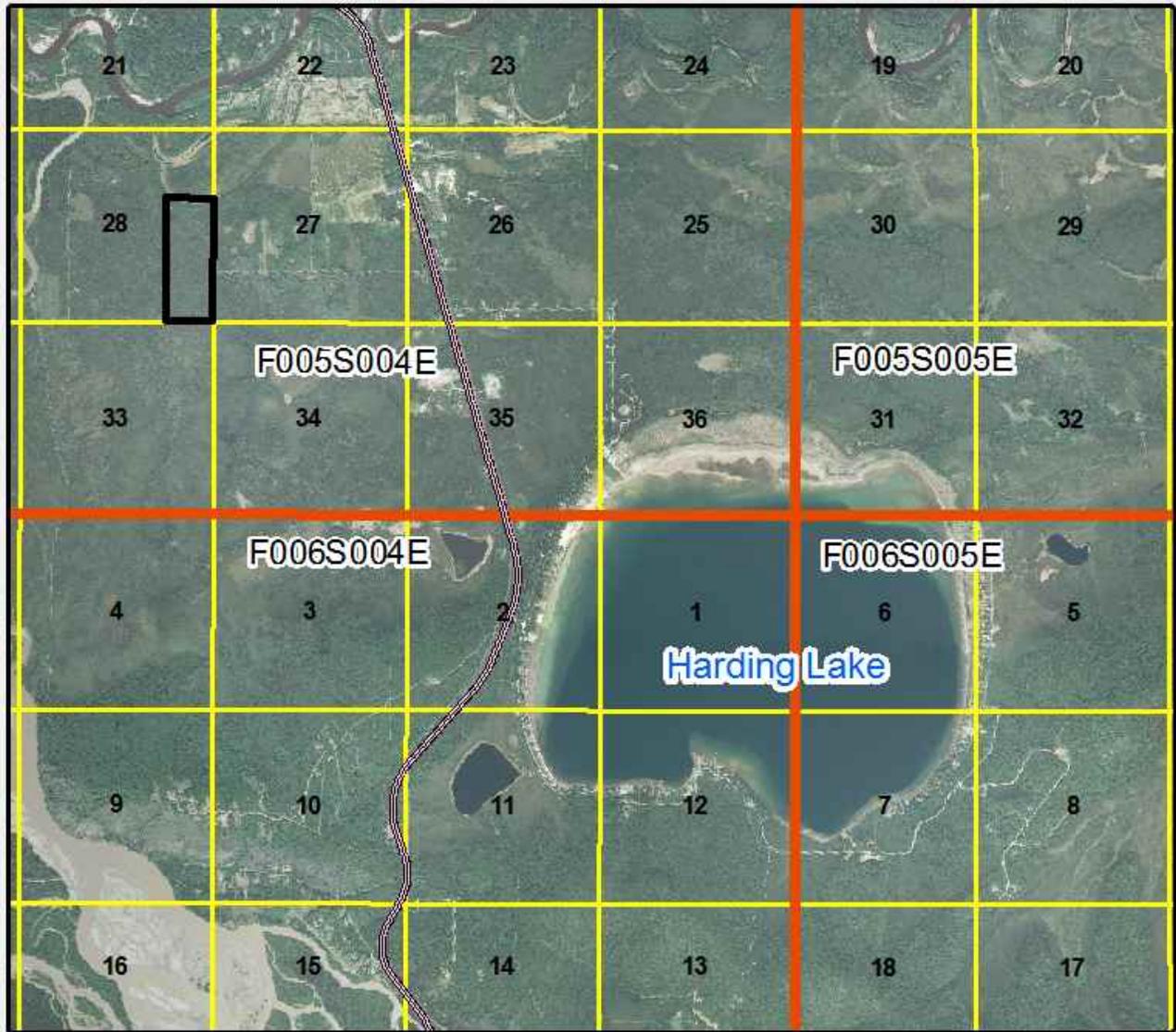
Brent Goodrum, Director
Division of Mining, Land, and Water

5/23/2013

Date

Attachment "A"

Preliminary Finding and Decision
Proposed reoffer of ADL 407096



Miles

Legend

- ADL 407096
- Richardson Hwy
- Townships
- Sections



For more information contact:
Dan Proulx
Department of Natural Resources
Division of Agriculture
Northern Region Office
Phone 907 374-3716
dan.proulx@alaska.gov

Map created by Dan Proulx 12/28/2012

Attachment B
State of Alaska
Department of Natural Resources
Division of Agriculture

Public Notice

for a Preliminary Decision of a proposed agricultural land offering in the Northern Region
ADL 407096

COMMENT PERIOD ENDS 4:00 pm, July 1, 2013

The Alaska Department of Natural Resources, Division of Agriculture (DNR/DAG) in cooperation with the Division of Mining, Land, and Water proposes to amend the Final Finding and Decision for auction #457, signed December 8, 2008, for the purpose of reoffering for sale one agricultural parcel of State land listed below, totaling approximately 100 acres. The amendments relate to changing the method of disposal for outcry to sealed bid and altering the development requirement and legal description to reflect the parcels current configuration.

ADL 407096 Township 5 South, Range 4 East, Fairbanks Meridian
Section 28: E1/2SE1/4, S1/2SE1/4NE1/4. 100 Acres

The parcel is located in the Fairbanks North Star Borough

The public is invited to comment on this proposed action. Copies of the preliminary decision are available at the DNR/DAG office in Fairbanks and online at www.dnr.alaska.gov/mlw/landsale.

Comments should be submitted to the following address;

Division of Agriculture
1648 S. Cushman, Suite 201
Fairbanks, AK 99701
Attn: Daniel Proulx

Comments must be received in writing at the above location on or before 4:00 pm July 1, 2013 to ensure consideration. The preliminary decision explains the schedule for a final decision. **Only persons who provide written comments during the comment period will be eligible to file an administrative appeal of the Final Finding and Decision.**

For more information please contact Daniel Proulx at (907) 374-3716, or email Dan.Proulx@alaska.gov.

If no significant change is required, the Preliminary Finding and Decision will be issued as the Final Finding and Decision of the Department of Natural Resources without further notice. A copy of the Final Finding and Decision or the web address where it can be read will be sent to any person who submitted timely written comments on the proposed decision. The Final Finding and Decision will set out the applicable process for appealing the decision under AS 38.05.035(i)–(m). To be eligible to appeal, a person must comment during the public comment period.

If this recommendation is approved, the state will publish a brochure that will be distributed in nearby communities and be available on line at <http://dnr.alaska.gov/mlw/landsale> . The brochure will contain information about the parcel and how to participate in the auction. You may contact one of DNR's Public Information Centers for information on how to get a brochure or visit the web at www.dnr.alaska.gov/mlw/landsale for current land offering information.

Individuals with disabilities who may need auxiliary aids, services, or special modifications should contact the Public Information Center (PIC) in Fairbanks, between 10:00 a.m. and 5:00 p.m. Monday through Friday, at (907) 451-2705, or TTY (907) 451-2770, or email: fbx-pic@dnr.state.ak.us.

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

Attachment C
Conditions and Reservations

SUBJECT to valid existing rights, including reservations, easements, and exceptions in the U.S. Patent, or other state or federal conveyance, and in acts authorizing the issue thereof; easements, rights-of-way, covenants, conditions, reservations, notes on the plat, and restrictions of record, if any.

SUBJECT to a public access and utility easement, 50 feet wide, on all lot lines where a section line is not present.

SUBJECT to a perpetual covenant under AS 38.05.321(a)(1) that restricts or limits the use of the land for agricultural purposes.

SUBJECT to a perpetual covenant under AS 38.05.321(a) (2) establishing restrictions on further subdivision of this tract.

Subject to a farm development requirement requiring acreage to be cleared and broken. The amount of acreage required to be cleared will depend on several factors and will be noted in the brochure. The land must be cleared and broken (i.e. clearing of native vegetation, including stumps, roots and debris and initially tilled, generally requiring heavy breaking implement, that leaves the ground broken and worked to a point where it is ready for further tillage or seeding with standard farm equipment) within five years of issuance of the sale contract. The area under berms will not be counted toward the clearing requirement. Cropland acres that are improved to a cleared and broken condition must be maintained in that condition throughout the term of the sale contract. The patent will not be issued until the development requirement is met and will not be issued if the cleared and broken land has not been maintained in that condition.

Purchaser should contact the Alaska Department of Natural Resources/Division of Forestry and the Alaska Department of Environmental Conservation (DEC) prior to any burning to ascertain if a permit is required.

Purchaser should contact the USDA/NRCS, for the delineation of wetlands, prior to clearing, road building or other activities that may result in the placement of dredged or fill material into wetlands.

Purchaser is responsible for providing a water and sewer systems if they are desired. The state does not provide percolation tests, wells, and other soil or water determinations. It is the responsibility of the purchaser to meet Alaska DEC requirements for sewage disposal.

Purchaser must monitor the parcel for plants on the State's list of noxious weeds and take prompt and effective eradication measures against any such plants. Failure to fulfill these responsibilities will make the purchaser subject to state pest control regulations 11 AAC 34.100-400.

The sale of this parcel under the agriculture program, the state does not give or imply any warranty as to the lands fitness, use or suitability, or whether public utilities or services will be provided.

Farm Conservation Plan. This contract shall not be executed by the seller until an acceptable Farm Conservation Plan has been approved by the seller pursuant to the provisions of 11 AAC 67.177-.180. Upon execution of this contract by the seller, the approved conservation plan becomes incorporated by reference in this sale contract and shall become a covenant and condition binding upon the purchaser as a term of this contract.