

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

**Proposed Non-competitive Sale to Preference Right Applicant,
Clifford and Beth Howard**

PRELIMINARY DECISION – ADL 225090
pursuant to
AS 38.05.102
AS 38.05.321

PUBLIC COMMENT PERIOD ENDS 3:30 PM, THURSDAY, JUNE 6, 2019

Proposed Action-Noncompetitive Sale: The Department of Natural Resources (Department), Division of Mining, Land and Water (Division), Land Sales Section (Land Sales) has received an application from Clifford and Beth Howard to purchase ADL 225090, pursuant to *Alaska Statute (AS) 38.05.102*. The Division proposes to allow the parcel to be sold through a non-competitive sale to the applicant and will impose deed restrictions as required by *AS 38.05.321* to limit post-patent land use to agricultural purposes. The subject parcel is located approximately 10 miles SE of Talkeetna, Alaska. The current legal description is Government Lot 1, Section 4, Township 24 North, Range 4 West, Seward Meridian, containing approximately 40.19 acres. See Attachment A: Vicinity Map.

Comment Period: The public is invited to comment on this Preliminary Decision of the proposed noncompetitive sale. **The deadline for comments is 3:30 PM, Thursday, June 6, 2019.** See attached Public Notice for information on how to submit comments.

Authority: The Department has authority under *AS 38.05.102* to sell state-owned lands and under *AS 38.05.321* to restrict the land to agricultural use only if, on preparation and issuance of a written finding, it is determined to be in the best interest of the State, as required by *AS 38.05.035(e) Powers and Duties of the Director*.

Administrative Record: ADL 225090 constitutes the administrative record for the proposed action. Additional files, documents, and plans listed throughout this decision are incorporated by reference.

Scope of the Decision: The scope of this decision and its findings are limited to determining if the applicant and the subject parcel qualify under the listed statute, if it is in the state's best interest to sell the subject parcel, and if it is in the state's best interest to sell the subject parcel to the applicant; and to the issues related to these statutory requirements and facts that are material to the determination of whether the proposed disposal will best serve the interests of the State.

The proposed decision recommends this parcel to be sold to the applicant through a noncompetitive sale in accordance with AS 38.05.102. The patent will include agricultural restrictions as required by AS 38.05.321. Other restrictions regarding land use will be handled by the Matanuska-Susitna Borough.

The applicant is responsible for bearing the cost of survey and appraisal.

Description:

Location: The subject parcel is located on the east side of the Parks Highway, approximately 10 miles southeast of Talkeetna, Alaska.

Municipality/Borough: The subject parcel is located within the Matanuska-Susitna Borough.

Native Regional/Village Corporations/Councils: The regional corporation is Cook Inlet Region, Inc. (CIRI). There are no native village corporations or tribal councils in this area.

Legal Description: The subject parcel is unsurveyed. The current legal description is Government Lot 1, Section 4, Township 24 North, Range 4 West, Seward Meridian, containing approximately 40.19 acres. See Attachment A: Vicinity Map.

Title:

The state received title to the parcel on October 17, 1960, subject to any vested and accrued rights, reservations, easements, and exceptions listed in Patent Number 1213622, described as Government Lot 1 in Section 4 of Township 24 North, Range 4 West, Seward Meridian. The land was conveyed to the University of Alaska as part of the state's University Grant entitlement, state selection file UNIV 37.

On December 21, 1983, the University of Alaska conveyed fee title back to the State, subject to valid existing rights, through Statutory Quitclaim Deed, Document Number 1983-003707-0, recorded December 28, 1983, Book 99 Page 229, Talkeetna Recoding District. The state's casefile is OSL 792. Title Report 11170 was issued October 2, 2018.

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 land uses. The State may also lease them to mineral developers or allow mining locations to be staked. However, Alaska law also provides that the land 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 the Cook Inlet Region, Inc. There are no native interests identified with this parcel.

Conflicts or Pending Interests: None.

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.

Background and Discussion:

On May 6, 1964, the state leased approximately 320 acres of land classified as agricultural to Don Clark for a term of 55-years, expiring on May 5, 2019. The lease was designated as ADL 22652. The lease restricted the use of the land to agricultural purposes and expressly stated that any use in material conflict with the land classification constituted a breach of the lease and may be subject to termination.

In accordance with the terms of the lease, the lessee had the ability to assign the lands, or a portion of the land, if it was determined that the assignment was in the best interest of the State. Upon the Department's approval, the assignment would be granted, and the assignee became subject to the terms of the original lease, including limiting use of the land to agricultural purposes only. The lease went through a series of assignments in the 1970's and 1980's and development of the land stalled.

In September 1989, the State received an application for a partial assignment of the Clark's lease, ADL 22652, to Clifford and Beth Howard. In 1990, the State approved the assignment of Government Lot 1 containing approximately 40.19, as described in Document Number 1990-002166-0, recorded October 15, 1990 in the Talkeetna Recording District, subject to the terms of the original lease. The assignment created a new leasehold, serialized ADL 225090, and reduced the Clark's interest in the original lease, ADL 22652, to approximately 280 acres. The Howard's leasehold was created subject to 50' public access easement for Answer Creek.

Since taking over the lease, the Howard's have cleared a portion of the leasehold and constructed a 500-foot-long gravel driveway. There is a small, mobile structure located within the cleared area. As described in their Development Plan and State Farm Conservation Plan, approved by the Division of Agriculture on March 27, 2019, the Howard's wish to utilize the parcel to harvest birch sap from existing stands and farm raspberries. The Howard's are proposing a non-invasive, renewable farm plan that works with the land's natural assets. Infrastructure will be minimal.

In accordance with Section 23 of the lease and AS 38.05.102, the Director may, upon a finding that it is in the best interest of the state, allow the holder in good standing of that

leasehold a preference right to purchase the land for its appraised fair market value, provided all relevant statutory requirements are met. On March 18, 2019, the Howards applied to purchase the entire leasehold, ADL 225090, containing approximately 40 acres.

The process to complete a purchase of land in accordance with AS 38.05.102 can take up to two-years or longer and there was not enough time to adjudicate the Howard's preference right application prior to the expiration of the original lease on May 5, 2019. On March 22, 2019, the Southcentral Regional Land Office extended the Howard's lease pursuant to AS 38.05.070(f), for a term of two years, subject to the terms of the original lease. The lease extension will allow for the Howard's continued use of the land while a determination is made regarding their application and subsequent requirements. The Division provided public notice of the extension in accordance with AS 38.05.070(g).

Answer Creek flows through the subject parcel and provides important habitat for sockeye salmon and spawning coho salmon. Listed as an anadromous water body in the Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fishes – Southcentral Region, Effective June 1, 2018, Answer Creek is subject to special protections and permitting requirements pursuant to AS 16.05.871. The Alaska Department of Fish and Game (ADF&G) regulates activities affecting listed anadromous water bodies.

ADF&G recommends a 150-foot riparian buffer to support essential hydrologic and biologic functions of rivers including sediment control, temperature control, nutrient removal, large woody debris contribution, food supply, and stream flow maintenance. The buffer will minimize the risk of contamination should fertilizers or pesticides be used on the subject parcel. If the agricultural use includes cattle in the future, ADF&G also recommends that fencing be placed at the 150-foot buffer edge to protect aquatic and riparian environments from. Trampling of banks and wetlands can lead to erosion and increased sediment into the water body which can negatively impact aquatic and riparian environments.

Planning, Classification, and Mineral Orders:

DNR Land Use Plan: The subject parcel is located within the Susitna Matanuska Area Plan (SMAP), within the South Parks Highway management unit. The SMAP and Land Classification Order (LCO) SC-09-002 were adopted in August of 2011. The LCO superseded all previous land classification orders within the planning area of the SMAP.

The land classification for the subject parcel was mistakenly omitted in the SMAP. The Division of Agriculture requested a Determination of Plan Designation and Land Classification for the lands not addressed in the SMAP. On June 1, 2017, the Division issued Determination SC-09-002-D11 which designated the lands as Agriculture with the classification of Agricultural Land.

Land Classification: The State classified the subject parcel as Agriculture under Classification Order SC-09-002-D11.

Mineral Order: The parcel has been previously closed to mineral entry by Mineral Closing Order 239.

Area plan subsurface management policy states that, in general, areas or parcels 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 closures, 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 leasable 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*).

Local Planning: The subject parcel is located within the Y Community Council Area (YCC). A review of the 2007 Susitna (Formerly Y) Community Comprehensive Plan, adopted March 6, 2007, and the Matanuska-Susitna Borough Comprehensive Plan - 2005 Update, adopted January 3, 2006, did not indicate any conflicts with the proposed sale.

Easements and Setbacks:

This parcel will be subject to a variety of reservations and restrictions to be of public record before the applicant can apply for a 40-acre exemption with the local platting authority. The easements and reservations identified below will be shown on a record of survey to be completed after the 40-acre exemption is approved.

- A building setback and riparian buffer of undisturbed vegetation, 150 feet in width from the ordinary high-water mark, will be reserved along each side of Answer Creek, pursuant to the Susitna-Matanuska Area Plan and recommended by ADF&G. Only water dependent uses are permitted in riparian buffers. Principal and most accessory structures are precluded within the riparian area.
- A public access easement 50 feet in width from the ordinary high-water mark along each side of Answer Creek, pursuant to *AS 38.05.127* Access to Navigable of Public Water.
- A dedicated right-of-way, 50 feet in width, for Mt. Hunter Drive depicted on Plat Number 69-2, Moose Meadows Subdivision Replat, recorded March 11, 1969 in the Talkeetna Recording District.
- A section line easement, 50 feet in width on each side of surveyed or protracted section lines on state-owned land in accordance with *AS 19.10.010* Dedication of Land for Public Highways and 11 AAC 51.025 Section-line Easements.
- A survey easement, 5 feet in width, from the nearest practical point on the property boundary to control monuments within the parcel and an easement with

a radius around the control monument, and as applicable, a 5-foot direct line-of-sight easement, 5 feet in width, from the control station to an azimuth mark or other control monument.

- Additional reservations and/or restrictions required through the local platting authority.

Access: Access to the subject parcel is via the public road system from the S. Talkeetna Spur Rd. to S. Noel Wien Ave., to E. Moose Hollow Ave., to E. Hillside Dr., then S. Mt. Hunter Dr.

Access To and Along Public or Navigable Water: Answer Creek lies within the subject parcel and has been determined to be public water. To ensure free access to and along public waters, a public access easement of 50 feet in width from the ordinary high-water mark, will be reserved along each side of Answer Creek in accordance with AS 38.05.127 Access to Public or Navigable Water.

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

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.

Performance Guaranties and Insurance: Not applicable to this decision.

Survey: Preliminary Survey Determination #SD 2019-02 dated January 24, 2019, determined the subject parcel to be unsurveyed. The applicant must have a completed survey approved by the Department and the Matanuska-Susitna Borough in order to purchase the subject parcel. Upon the Department's approval for purchase of the parcel, the applicant will be required to complete an Alaska State Land Survey (ASLS) at the applicant's expense. This survey must be approved by the Department and the Matanuska-Susitna Borough.

The aggregate parcel exceeds 40 acres within surveyed Section 4 and may qualify for a "40-acre exemption" under MSB 43.15.012. Upon concurrence from the Borough, a Record of Survey may be sufficient for the required monumentation.

Compensation/Appraisal: If the purchase is approved, the parcel will be sold at fair market value in accordance with AS 38.05.102 and as required by AS 38.05.840(a). At the appropriate time, the Division will notify the applicant to begin the appraisal process and will provide a list of approved appraisers. The Appraisal Unit will provide appraisal instructions to an approved appraiser. The applicant bears the cost of appraisal. The date fixed for sale under AS 38.05.840(a) and the valuation date of the appraisal will be

set as the date of inspection by the appraiser. The appraisal will factor in the deed restrictions required by AS 38.05.321.

Agency Review: Agency review is being conducted concurrent with the public notice of this preliminary decision. Agency comments received will be addressed in the Final Finding and Decision along with public comment.

Submittal of Public Comments: Pursuant to AS 38.05.945, the Division is issuing public notice inviting comment on this Preliminary Decision.

In accordance with AS 38.05.946(a), a municipality or corporation entitled to receive notice under AS 38.05.945(c) may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the Commissioner (or representative) shall attend the hearing. The Commissioner has discretion whether or not to hold a public hearing.

The Division will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the Preliminary Decision, additional public notice for the affected lands will be given. Reducing the amount of land offered and making minor changes to any of the proposals will not be considered significant changes requiring additional public notice.

If no significant change is required, the Preliminary Decision, including any deletions, minor changes, and summary of comments and Division responses will be issued as a subsequent Final Finding and Decision, without further notice.

Only persons from whom the Division receives timely, written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision. Upon approval and issuance of a Final Finding and Decision, a copy of the decision will be made available online at <http://landsales.alaska.gov/> and sent with an explanation of the appeal process to any party who provides timely written comment.

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

**DEADLINE TO SUBMIT WRITTEN COMMENT IS
3:30 PM, THURSDAY, JUNE 6, 2019**

Stipulations: The applicant will be required to comply with the following stipulations to complete the proposed land sale:

1. The lessee must remain in good standing with respect to the terms of the lease until the lease is relinquished. If the lessee is not in good standing at any time prior to relinquishment of the lease, the purchase process will be halted until the lessee regains good standing as determined by the Division.

2. Once the Final Finding and Decision is signed and the appeal period is over without an appeal received, a notice to proceed to survey will be issued. The applicant must hire a surveyor and the surveyor must apply to the Division's Survey Section for Survey Instructions.
3. After issuance of the Survey Instructions, the applicant must submit a completed survey to the Division's Survey Section for review. The applicant must have the survey approved by the Department and the Matanuska-Susitna Borough, as set forth in the Survey Instructions.
4. Upon approval and recording of the survey, a notice to proceed to appraisal will be issued. The applicant must hire an appraiser from the approved Department appraiser list. The appraiser must apply for appraisal instructions issued by the Division, and then must submit to the Division a completed fair market value appraisal in accordance with appraisal instructions issued by the Division. The Division must approve the appraisal.
5. Upon approval of the appraisal, 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 Division the following:
 - A completed and signed Declaration of Intent Form;
 - A signed and notarized Relinquishment of Land Lease form;
 - Payoff amount plus \$265.00 patent application and recordation fees OR minimum 5% of the purchase price as deposit plus \$405.00 land sales contract application and recordation fees. Fees are subject to change.
6. Prior to the completion of the purchase and issuance of a state conveyance document, the applicant must remain in good standing with respect to all terms of the Contract for the Sale of Real Property throughout its term, if such a contract is issued. As an agricultural land sale, the Contract for the Sale of Real Property may include agricultural development requirements to be completed in a specified timeframe. The applicant must also remain in compliance with all applicable state and local ordinances and regulations, including all applicable taxes. Failure to do so may result in termination of the Contract for the Sale of Real Property.

Special Note: The applicant must complete steps 1-5 above by February 5, 2021, in order to ensure the applicant has a signed land sales contract before the lease extension expires on May 5, 2021. Failure to do this will result in the loss of the right to purchase this parcel of land. Additionally, the applicant may need to apply for additional authorizations and incur associated costs to ensure continued use of the parcel.

If extenuating circumstances delay any of the stipulations listed above, the applicant is responsible for notifying the Division of the delay and obtaining approval for the delay with new timeframes for completion to be given. The subject parcel cannot be purchased until all the above stipulations have been satisfied. Failure to do this could result in the closure of the purchase application.

Alternatives: The following alternatives were considered.

Alternative 1: Sell

Offer the subject parcel for sale as proposed in this decision in accordance with AS 38.102 and AS 38.05.321.

Alternative 1 provides an opportunity for an Alaskan to purchase land for agricultural use in the area. Due to the unique soil qualities of the area, agriculture land classification, and the ease of access to the Anchorage, Palmer and Talkeetna distribution network for agribusiness or agrarian products to nearby markets, the subject parcel is best suited for agricultural sale. Sale of the subject parcel as proposed will provide land to the private sector to be used for agricultural activity and generate revenue for the State. Therefore, it is in the best interest of the state to sell the parcel as proposed in this decision. This is the preferred alternative.

Alternative 2: Lease

Continue to lease the land for agricultural use upon expiration of the current lease extension.

Under Alternative 2, the Department would continue to manage the land for agricultural purposes only, ensuring the lessee is in compliance with the terms of the lease. As provided by AS 38.05.070, the Howard's lease may be renewed only once for a term not longer than the initial term of the lease. The lease would be renewed under the current statutory framework, subject to additional requirements including survey and appraisal. In addition to expending resources to manage the land throughout the term of the lease; the State would need to manage any improvements remaining on the land upon expiration of the lease and undertake reclamation work, if needed, while forgoing income that could have been generated by the sale as proposed in this decision. This is not in the best interest of the State. This alternative is not preferred.

Alternative 3: Retain

The Department will take no action and retain the subject parcel after the end of the current lease extension.

Under Alternative 3, the State would need to expend resources managing the land and any improvements, while forgoing the income that could have been generated by a sale. A portion of the parcel has been cleared and there is currently a developed trail and gravel driveway on the subject parcel. The development plan proposed further expansion and improvement of the existing trails system. The improvements would impose a significant maintenance or reclamation burden at the end of the lease.

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 provisions of AS 38.05.035, AS 38.05.102 and AS 38.05.321. Alternative 1 provides accessible, quality land for private ownership and will generate revenue for the State.

After public notice, the subsequent review process may result in changes to the preferred alternative. 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 land. 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.

If conditions for which this application was made change before the proceeding to purchase, either by contract or payment in full, an amended decision, including further public notice, may be required prior to the completion of the purchase.

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:

(signature on file)

Shawana Guzinski,
Natural Resource Specialist III

(April 30, 2019)

Date of Signature

Approved by:

(signature on file)

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

(April 30, 2019)

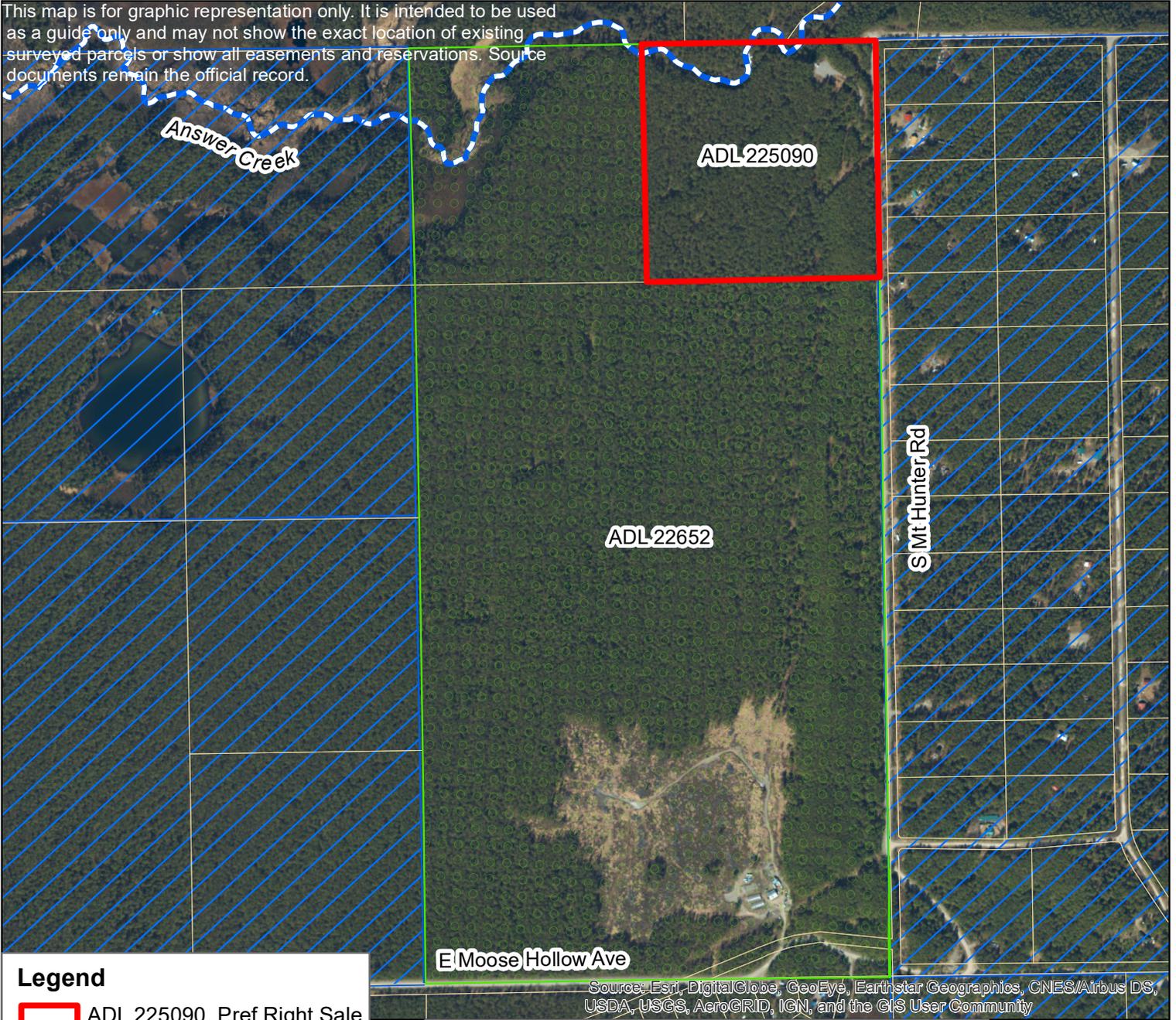
Date of Signature



Clifford and Beth Howard ADL 225090

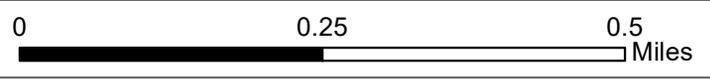
Attachment A: Vicinity Map Preliminary Decision for a Proposed Non-competitive Sale Pursuant to AS 38.05.102

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 surveyed parcels or show all easements and reservations. Source documents remain the official record.



Legend

- ADL 225090, Pref Right Sale
- ADL 22652, Lease Area
- Anadromous Stream
- Municipal Entitlement



HUK 4/26/2019

Section 4, Township 24 North, Range 4 West, Seward Meridian

USGS QUAD 1:63.360
 Talkeetna A-1
 For more information contact:
 Shawana Guzenski
 Department of Natural Resources
 Division of Mining, Land, and Water
 Land Sales Section
 Phone: 907-269-8594
 Fax: 907-269-8916
 Email: shawana.guzenski@alaska.gov

