

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

**Proposed Non-competitive Sale to Preference Right Applicant,
Robert L. Dawson**

PRELIMINARY DECISION – ADL 22652

**pursuant to
AS 38.05.102
AS 38.05.321**

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

Proposed Action, Non-competitive Sale: The Department of Natural Resources (Department), Division of Mining, Land and Water (Division), Land Sales Section (Land Sales) has received an application from Robert L. Dawson to purchase a parcel of State land 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 described as a portion of the SE1/4 of Section 4 of Township 24 North, Range 4 West, Seward Meridian, containing approximately 60 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 the 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 restrict use of the land to agricultural purposes only under *AS 38.05.321*, 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 22652 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 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, Incorporated. There are no native village corporations or tribal councils in this area.

Legal Description: The subject parcel is unsurveyed. The current legal description of the subject parcel is described as a portion of the SE1/4 of Section 4 of Township 24 North, Range 4 West, Seward Meridian containing approximately 60 acres. See Attachment A: Vicinity Map.

Title:

The state received title to the parcel on April 20, 1962, subject to any vested and accrued rights, reservations, easements, and exceptions listed in Patent Number 1226464, and described as the SE1/4 of 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 11633 was issued March 6, 2019.

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, Incorporated regional corporation. There are no native interests identified with this parcel.

Other Conflicts or Pending Interest:

- ADL 22652 is subject to the dedicated 60-foot right-of-way for Hillside Drive depicted on Plat Number 65-4, Benka Lake Alaska Subdivision, recorded September 22, 1965 as Document Number 1965-000314-0 in the Talkeetna Recording District.
- ADL 22652 is subject to a public use easement for the constructed location of Hillside Drive granted to the Matanuska-Susitna Borough by D. Craig Clark and Bonnie M. Clark. The State of Alaska consented to the right-of-way on September 27, 1984. The proposed property line of the subject parcel will abut the constructed location of Hillside Drive.
- Matanuska Electric Association, Incorporated (MEA) holds a right-of-way easement granted by Robert and Cathie Dawson on July 1, 2003, described in Document No. 2005-000813-0, recorded May 19, 2005 in the Talkeetna Recording District to construct and maintain existing utility lines. The state has not consented to this agreement and considers the right of way easement to be unauthorized.

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 which limited use of the

land to agricultural purposes. Development of the land stalled while the lease went through a series of assignments in the 1970's and 1980's.

In 1989, a portion of the leasehold, described as Government Lot 1 containing 40.19 acres more or less, was assigned to Clifford and Beth Howard. 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. In 1995, the Clark's assigned ADL 22652, described as Government Lot 2, S 1/2 of the NE 1/4, and the SE 1/4 of Section 4, to Robert L. Dawson and Cathie Jo Dawson.

Over the last 24 years, the Dawson's have invested a substantial amount of time and money developing the parcel for agricultural use and utilize the leasehold as their primary residence. The Dawson's operate a successful vegetable farm on the subject parcel and intend to continue operations upon purchase. Mr. Dawson has already submitted the required State Farm Conservation Plan (SFCP), approved by the Division of Agriculture on September 18, 2018, needed to purchase the subject parcel. The SFCP is valid through September 18, 2023. The SFCP outlines Mr. Dawson's development plan for the continued agricultural development and infrastructure. Infrastructure at the leasehold currently consists of:

- a 30-foot by 40-foot residential home with well and septic system;
- a 30-foot by 40-foot shop on a concrete slab;
- three high-tunnel greenhouses,
- 30-feet by 72-feet, situated on a gravel pad;
- a sawmill situated on an 8-foot by 40-foot concrete slab;
- one 300-gallon diesel fuel tank for an electrical generator; and
- one 300-gallon tank for residential heating oil.

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 29, 2019, Mr. Dawson applied to purchase an approximately 60-acre portion of land within the existing 280-acre leasehold pursuant to AS 38.05.102.

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 Mr. Dawson's preference right application prior to the expiration of the original lease on May 5, 2019. On April 17, 2019, the Southcentral Regional Land Office extended Mr. Dawson'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 Mr. Dawson's continued use of the land while a determination is made regarding his application and subsequent requirements. The division provided public notice of the extension in accordance with AS 38.05.070(g).

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 designating the lands as Agriculture with the classification of Agricultural Land.

Land Classification: The State classified the subject parcel as Agricultural Land 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 actions are identified below and will be shown on a record of survey to be completed after the 40-acre exemption is approved.

- Vacate the dedicated 60-foot right-of-way for Hillside Drive depicted on Plat Number 65-4, Benka Lake Alaska Subdivision, recorded September 22, 1965 as Document Number 1965-000314-0 in the Talkeetna Recording District.

- Dedicate the 60-foot public use easement for the constructed location of Hillside Drive described in Book 103, Pages 997-999A recorded November 8, 1984, Talkeetna Recording District. The proposed property line of the subject parcel will abut the constructed location of Hillside Drive.
- Dedicate a right-of-way easement for utilities, as described in Document No. 2005-000813-0 recorded May 19, 2005, Talkeetna Recording District.
- A 50-foot wide section line easement 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 5-foot survey easement 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 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, then E. Hillside Dr.

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

Hazardous Materials and Potential Contaminants: Known hazardous materials on the subject parcel consist of diesel fuel and heating oil stored in two 300-gallon tanks. There is no known contamination of 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. This is a risk that does not outweigh the need to offer quality and accessible land to the public.

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. The applicant will be responsible for complying with Borough requirements to vacate the dedicated right-of-way for Hillside Drive, dedicate the constructed location of Hillside Drive, and dedicate a utility

easement for the existing utility line during the platting process. 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 may result in the loss of the right to purchase this parcel of land or more likely, the applicant/lessee may need to apply for additional authorizations and incur associated costs, some which could be significant, 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 he developed 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, Mr. Dawson'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 its improvements, while forgoing the income that could have been generated by a sale. The subject parcel has undergone considerable development for agricultural use and existing infrastructure on the parcel includes a residential home with well and septic system, a shop on a concrete slab, multiple high-tunnel greenhouses on a gravel pad, and a sawmill situated on a concrete slab. Attempted removal would likely cause extensive damage to the soils. 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 Guzenski,
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

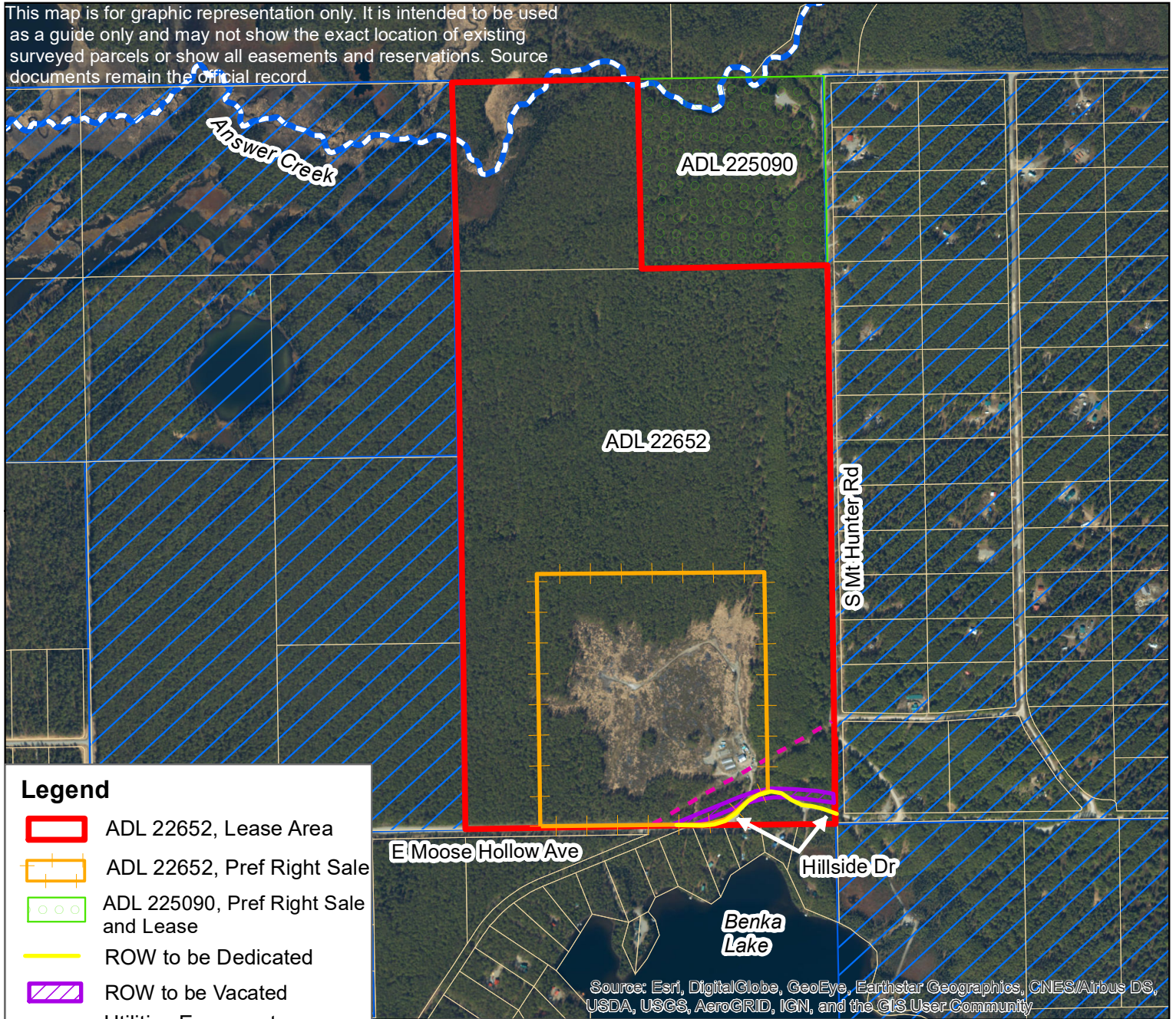


Robert L. Dawson ADL 22652

Attachment A: Vicinity Map

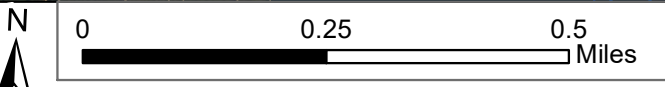
Preliminary Decision for a Proposed Non-competitive Sale
Pursuant to AS 38.05.102

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 22652, Lease Area
- ADL 22652, Pref Right Sale
- ADL 225090, Pref Right Sale and Lease
- ROW to be Dedicated
- ROW to be Vacated
- Utilities Easement to be Dedicated
- 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 Guzanski
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Division of Mining, Land, and Water
Land Sales Section
Phone: 907-269-8594
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