

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

**Proposed Noncompetitive Sale to Preference Right Applicant**

**PRELIMINARY DECISION – ADL 30089  
pursuant to AS 38.05.102**

and

**PROPOSED RELATED ACTION  
Mineral Order (Closing) – AS 38.05.185 and AS 38.05.300**

**PUBLIC COMMENT PERIOD ENDS 3:30 PM, WEDNESDAY, MAY 20, 2020**

**I. Proposed Actions**

*Preliminary Decision: Approval of Noncompetitive Preference Right Sale ADL 30089*

*Attachment A: Vicinity Map*

*Attachment B: Public Notice*

*Public is invited to comment on the proposed related actions:*

*Draft Mineral Order (Closing) MO 1240*

Primary Proposed Action: The Department of Natural Resources (Department), Division of Mining, Land and Water (Division), Land Sales Section (Section) received an application to purchase a parcel of state-owned land pursuant to Alaska Statute (AS) 38.05.102. The proposed decision allows the parcel to be sold through a noncompetitive sale to the applicant. The parcel is located 26 miles southwest of the Tok Cutoff on the Glenn Highway. The legal description is Tract A, Alaska State Land Survey 98-35, recorded as plat 99-10 in the Fairbanks Recording District, Fourth Judicial District, containing approximately 4.032 acres. See attached map.

AS 38.05.102 allows the granting of a preference right purchase or lease to those holding leases authorized under AS 38.05.070-105 who are currently in good standing. A 1981 amendment to AS 38.05.070 made this section inapplicable to short-term leases.

Proposed Related Action: This preliminary decision is dependent upon adoption of Mineral Order 1240 (closing). The Department proposes to close the subject parcel to new mineral entry pursuant to AS 38.05.185 and AS 38.05.300. A draft of Mineral Order No. 1240 accompanies this preliminary decision for public review and is discussed in the Planning, Classification, and Mineral Orders Subsection (V)(e)(3) on page 6 of this document.

This action will be developed separately; however, public notice is conducted concurrently through this preliminary decision. Approval of proposed actions is dependent upon one another in that one action will not proceed without the approval of all actions.

Public Notice of Proposal: In accordance with AS 38.05.945 Notice, during a period of at least 30 consecutive days, the public will have the opportunity to submit written comment on this proposal. Public notice for all actions is being conducted concurrently and will include this proposed sale and Mineral Order 1240.

See **Section VII. Submittal of Public Comments** at the end of this document and Attachment B: Public Notice for details on how to submit a comment for consideration. If, after consideration of timely, written comments, the Department moves forward with the proposal, a Final Finding and Decision will be issued.

## **II. Authority**

The Department has authority under AS 38.05.102 to sell State-owned land 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. Article VIII, Section 1, of the State of Alaska Constitution states, "it is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

For related actions, AS 38.05.185 Generally and AS 38.05.300 Classification of Land allow for mineral orders.

## **III. Administrative Record**

The project file for ADL 30089 constitutes the administrative record for this proposed action. Incorporated by reference are:

- The Eastern Tanana Area Plan adopted August 28, 2015; and
- DNR case file ADL 27074.

Also incorporated by reference are additional files and documents listed throughout this decision.

## **IV. 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, 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. The Division does not intend to impose deed restrictions to control post-patent land use. Restrictions regarding land use will be handled by the local zoning authority, if any.

The proposed mineral order will be issued concurrently with the Final Finding and Decision. This action is described in more detail in the Planning, Classification, and Mineral Order Subsection (v)(e)(3) on page 6.

## **V. Description**

- a. Location: The parcel is located 26 miles southwest of the Tok Cutoff on the east side of the Glenn Highway on USGS quadrangle map Nabesna D-5.

*Platting Authority:* Unorganized Borough.

*Native Councils and Corporations:* The parcel is located 30 miles northeast of Mentasta Traditional Council, and within Ahtna, Inc. regional boundaries (Mentasta Village Corporation merged with AHTNA, Inc. in 1971).

- b. Legal Description: Tract A, Alaska State Land Survey 98-35, Recorded as plat 99-10 in the Fairbanks Recording District, Fourth Judicial District, containing approximately 4.032 acres.

The proposed mineral order has the same legal description and boundaries as the subject parcel proposed for noncompetitive sale.

- c. Title: The state received title to the land on March 15, 2019 under Federal Patent 50-2019-0077. The state file is GS 884. Title report 11753 was issued June 3, 2019, with no third-party interests identified. The parcel is subject to the reservations, easements, and exceptions contained in the federal patent including RST 188, Slana-Tanana Crossing Trail.

*State Reservation of Title:* 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 landowner will be compensated for damages resulting from mineral exploration and development (AS 38.05.130).

*Navigable Waters:* Per AS 38.05.126 (b) Navigable and Public Waters, "...the State has full power and control of all of the navigable or public water of the state, both meandered and unmeandered, and the State holds and controls all navigable or public water in trust for the use of the people of the state." This trust is in accordance with the principles of the Public Trust Doctrine, which are included in Article VIII, Section 14 of the Constitution of the State of Alaska and protected in the United States Constitution. It is vested in the title to this land, is not transferable, and the State's title to submerged lands under navigable waters cannot be relinquished by a transfer of the property. In holding with this concept, navigability determinations are made and access will be reserved per AS 38.05.127 Access To and Along Public and Navigable Water. For more information, see Access To, Within, and Beyond Public or Navigable Water subsection of this document.

The Bureau of Land Management and the State of Alaska have not made a navigability determination in file GS 884 for waters within the affected townships for title purposes.

*Native Interest:* The subject parcel is within the boundaries of AHTNA, Inc. native regional corporation. There are no native interests identified with this parcel.

*Other Conflicts or Pending Interest:* RST 188 Slana-Tanana Crossing Trail.

d. Background and Discussion:

Tentative approval for the subject parcel was issued to the State of Alaska in 1964, and the federal government issued Interim Conveyance 226 to the State on August 22, 1979 (this was later corrected by Interim Conveyance 2201 on February 2, 2009). On August 20, 1968, the State issued a 55-year lease for the subject parcel to Virgil B. McClure for utility purposes. The lease was subsequently assigned from Virgil B. McClure to Robert F. and Fern Cottrell on April 22, 1970 and then to Alice McCune on October 16, 1973. The lease and assignments are recorded at Book 1059, Pages 887-895, in the Fairbanks Recording District on April 14, 1998.

The original leasehold was a 100-acre parcel. On June 27, 1979, the Bureau of Land Management (BLM) rescinded tentative approval for conveyance to the State for Sections 16 and 21, Township 14 North, Range 11 East, Copper River Meridian. These sections contained approximately 50 acres of the leasehold. The legal description of the leasehold was amended on April 24, 1998, to omit the area no longer owned by the State. The resulting leasehold included Tracts A and B of Alaska State Survey 98-35, recorded as plat 99-10 in the Fairbanks Recording District.

Prior to 1992, the leasehold was used for a roadhouse, a gas station, and an auto repair shop. The business was known as “Sichuk’s Texaco and Roadhouse” and was closed down sometime in the 1980’s. In 1992, an environmental audit for the leasehold found hazardous waste and contamination, as well as abandoned vehicles and debris. Site contamination is addressed fully in Section i. Hazardous Materials and Potential Contaminants of this decision.

On February 11, 1998, interest in the lease passed from the estate of Alice T. McCune to Robert E. Boyd through a quitclaim deed recorded at Book 1060, Page 355-6, Fairbanks Recording District.

In 2004, the State approved lease assignment from the estate of Robert Boyd to Thomas T. Scott and Ellen R. Scott. In 2010, Thomas T. Scott and Ellen R. Scott quitclaimed interest in the leasehold to Jeff S. Burwell and Carol L. Burwell.

In 2010, Jeff S. and Carol L. Burwell granted a deed of trust to Wells Fargo Bank for the leasehold, to which the State consented in writing.

In 2011, Jeff S. and Carol L. Burwell signed a “partial relinquishment form and environmental hazard evaluation affidavit.” The form certifies that no hazardous materials remain on the property and no water is contaminated by any known substances. The Burwell’s also relinquished Tract B of ASLS 98-35 of the leasehold resulting in the remaining leasehold solely of Tract A, ASLS 95-35, approximating 4.032 acres. The relinquishment and environmental certification is recorded as document number 2011-014617-0 in the Fairbanks Recording District.

In 2012, Jeff S. and Carol L. Burwell applied for a preference right under AS 38.05.102. The current site includes a house, a shop, an older log building built by the original leaseholder, and a greenhouse. The current use is as a residence for preference right applicants Jeff S. and Carol L. Burwell.

The state received patent 50-2019-0077 on March 15, 2019 under.

### *Discussion*

Under AS 38.35.102 the state may sell land noncompetitively to a long-term leaseholder whose lease was authorized under AS 38.05.070-105. The lessee must be in good standing, and the sale must be in the best interest of the state.

The original lease was issued in 1968 under the authority of AS 38.05 as amended, as stated on the lease agreement. The Division finds that the issuance authority qualifies the lease for preference right claims under AS 38.35.102.

The preference right applicants and current leaseholders of the parcel are in good standing with the terms of the lease as of the last lease inspection conducted by the Northern Region Office of the Department and as of the writing of this document. Title report 11753 shows no third-party interests or liens. Therefore, the applicants qualifies under AS 38.05.102 for a preference right claim.

The applicants and previous leaseholders have added substantial improvements to the land including a home, a garage, an old log cabin, and a greenhouse. The parcel is used as a year-round residence. The sale of the parcel allows improvements to remain *in situ* and provides the applicants assurances required for future planning, raising capital, and passing property to heirs. If the state chooses to retain the parcel in state ownership and declines to renew the lease, the applicants will be required to remove the improvements from the land and restore it to its original condition. The applicant may lose the improvements if they are immobile, causing the applicant detriment.

The existence of improvements on the site is an indicator used by the Division to determine how actively a site is used and for what purpose. In this case, it appears the site is actively used, year-round, by the applicant for residential purposes. The use of the parcel and its location support the economic viability and growth of Tok. Conveyance under these circumstances supports Department goals of providing lands for private settlement and supporting economic growth throughout Alaska. Article VIII, Section 1 of the Alaska constitution states that “it is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.” A sale of land supports settlement in a more viable way than a lease of land, as it provides the private owner long-term assurances needed for planning improvements.

The use of the site has been for business and residential purposes for over 50 years. This preference right claim was specifically called-out in the Eastern Tanana Area Plan

(ETAP) as available for conveyance if it is in the best interest of the state, though the surrounding land will be predominantly designated for recreation and habitat and will be retained in state ownership. Chapter Two of the ETAP states that a management goal is to provide year-round residences for community expansion. The state finds that the consistent historical use of the site and its location, as well as ETAP plan language, renders the sale of this parcel in alignment with state planning and management documents.

The state could reason that retainment of this parcel in state ownership is consistent with land planning; surrounding land will be retained in state ownership pursuant to the ETAP and is classified as habitat and recreation land. However, the subject parcel is adjacent to the road, and does not cause any additional disruption to habitat or recreational uses.

Additionally, there has been contamination and subsequent clean-up efforts on this parcel as described in Section i. Hazardous Materials and Potential Contaminants of this decision. By conveying this property out of state ownership, the state mitigates a future liability caused by the lease or retaining of this land, and foregoes additional management costs related to a lease renewal.

For the reasons outlined above, the sale of the subject parcel is beneficial both to the state, and to the prospective applicant. The sale provides land for settlement to the applicant and is the site of used and useful improvements. It provides maximum use for the public benefit in that it provides land to the private sector, the proposed parcel use does not disturb or curtail nearby state land uses, and it promotes settlement and growth for the nearby community of Tok.

e. Planning, Classification, and Mineral Orders:

1. *Planning:* The subject parcel is located within the Eastern Tanana Area Plan (ETAP) adopted in August 28, 2015, in unit U-42. Recommended land use within this management unit includes wildlife habitat, public recreation, forestry, and timber harvest. Generally, development is not anticipated in this unit and is not appropriate except for certain types of utilities, communication facilities, roads, and similar types of projects that provide a general public benefit. However, the plan allows for the adjudication of this preference right specifically and states that “following the adjudication of a preference right request related to ADL 30089, the area occupied by this ADL may be reclassified depending on results of the adjudication. If the authorization is approved, the area will be reclassified to Settlement. If the authorization is denied, the designation of unit U-42 remains Habitat, including the area affected by the authorization decision.”
2. *Land Use Classification:* The subject parcel is designated as Unit 42 and is classified as Habitat in the Eastern Tanana Area Plan. If the state sells the parcel to the applicant, the parcel will be designated as Settlement. Should the state retain the parcel, the classification will remain Habitat.

3. *Mineral Order:* The Department proposes to close the parcel to new mineral entry in accordance with AS 38.05.185 for land disposals. There are no current mining claims located within the subject parcel. If approved by the Commissioner, Mineral Order 1240 will close the subject parcel to new mineral entry. If the Department approves the preference right sale, the mineral order will accompany the Final Finding and Decision. The approval of the mineral order is a separate action, occurring concurrent with the Final Finding and Decision.

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).

4. *Local Planning:* This parcel is located in the unorganized borough and no local planning documents exist.
- f. Traditional Use Findings: In accordance with AS 38.05.830 Land Disposal, in the Unorganized Borough, a traditional use finding is required since the subject parcel is not within an organized borough. There are no known traditional uses in the immediate vicinity of the subject parcel. The proposed sale is not expected to impact traditional uses.

This parcel has been under lease for 55 years and has been used for a roadhouse, gas station, and as a residence. Information obtained from the ETAP indicates that the general area is used for public recreation and wildlife habitat. There are no anticipated significant changes to traditional uses of the land and resources of this area as a result of the proposed action, other than a possible continuance of various traditional activities which may be practiced by new private-property owners.

Additional information on traditional use is welcome during the public comment period and if this proposal is approved, the Division will address the information received in a subsequent Final Finding and Decision, if one is issued. See **Section VIII. Submittal of Public Comments** at the end of this documents and *Attachment B: Public Notice* for details on how to submit comment.

- g. Access, including Access To and Along Public or Navigable Water: The parcel is adjacent to the Glenn Highway, with highway access.

In accordance with AS 38.05.127 Access To Navigable or Public Water, the Department will determine if a water body is navigable or public and establish easements or rights-of-

way as necessary to ensure unobstructed access to and along the body of water. Regulations dictating the creation of easements or rights-of-way under this statute include 11 AAC 51.035 Determination of Navigable and Public Water, 11 AAC 51.045 Easements To and Along Navigable and Public Water, and 11 AAC 53.450, Buffer Strips, Reserved Areas, and Public Easements.

The Department has not identified any public, navigable, or anadromous water bodies within the subject parcel. If any such water bodies are discovered, parcels will be subject to access reservations in accordance with AS 38.05.127 Access to Public or Navigable Water.

*Easements and Setbacks:*

- An existing 50-foot public access easement on the northern boundary of Tract A, ASLS 98-35 recorded as plat 99-10 in the Fairbanks Recording District;
- utility easements;
- 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; section-line easements may be vacated under AS 19.30.410 Vacation of Rights-of-Way and 11 AAC 51.065 Vacation of 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;
- An RS 2477 right-of-way for the Slana-Tanana Crossing Trail, serialized as RST 188 shall be reserved in accordance with AS 19.10.010 Dedication of land for Public highways, AS 19.30.400 Identification and Acceptance of Rights-of-Way, and Patent 50-2019-0077; and
- Any additional setbacks or restrictions reserved in Patent 50-2019-0077.

Where appropriate, reservations and restrictions will be depicted on the plat and described in plat notes.

- h. 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.
- i. Hazardous Materials and Potential Contaminants: A Phase I Environmental Audit was conducted by the Department for the leasehold on June 5, 1992. The audit found numerous contamination problems, including two buried fuel tanks, hydrocarbon wastes



and soil stains, possible well contamination, extensive miscellaneous debris and automotive debris, and possible groundwater contamination.

A field inspection of the site in June 1996 found over 60 automobile batteries, a drum full of an unknown liquid, several empty drums, and multiple patches of soil indicating spillage of hydrocarbon materials. In August 1996, initial site clean-up occurred, including removal of 67 batteries. A 1998 site inspection found five spots of contamination, the largest on the site of the former gas station. Old metal gas tanks, tires, a dump truck, and a car were seen on the site as well as two burn piles.

In 2003, the Texaco Petroleum Corporation cleared out all fuel tanks and the area was filled and inspected by the Department. At this time the Department found no issues with the property or a transfer of lease.<sup>1</sup>

In 2011, Jeff S. and Carol L. Burwell signed a “partial relinquishment form and environmental hazard evaluation affidavit.” The form certifies that no hazardous materials remain on the property and no water is contaminated by any known substances. The Burwell’s relinquished Tract B of ASLS 98-35 of the leasehold resulting in the remaining leasehold solely of Tract A, ASLS 95-35, approximating 4.032 acres.

In 2011, a Department filed inspection found the site to be clean, but that it was unclear whether underground storage tanks have been removed.

When the lease was assigned to Robert E. Boyd and subsequent leaseholders, they assumed liability for contamination on the leasehold. As with previous lease amendments, the sale agreement will include full disclosure of any site contamination and language releasing the state from any liability associated with the contamination.

Any applicant purchasing state land is expected to inspect the subject parcel to ascertain the quality and condition of the land prior to purchase. The state makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land proposed for conveyance to the applicant. The State 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 Department recognizes there are potential future environmental risks associated when previously vacant land is occupied, as has been the case in the course of this leasehold. Many of the activities increasing these potential risks are regulated by other agencies, such as the regulation of septic system installation by the Department of Environmental Conservation. The risk is no greater than when private vacant land undergoes development. Given this parcel has been grandfathered into ETAP and designated as available for transfer into private ownership, and given the high degree of

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<sup>1</sup> According to the “Explanation Addendum of Amendment to the Disclosure Statement” located in file ADL 30089, dated October 25, 2003.

interest from both the legislature and citizens in transferring State-owned land into private ownership, the Department is of the opinion that the benefits outweigh the potential risks.

- j. Survey: This parcel is defined as Tract A or Alaska State Land Survey 98-35, Recorded as plat 99-10 in the Fairbanks Recording District, Fourth Judicial District, containing approximately 4.032 acres. No additional surveying is required.
- k. Compensation/Appraisal: If the purchase is approved, the parcel will be sold at fair market value 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.

## **VI. 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.

## **VII. Submittal of Public Comments**

Pursuant to AS 38.05.945, the Division is issuing public notice inviting comment on this Preliminary Decision and the proposed related actions.

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 or proposed related actions, 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 the proposals are approved and no significant change is required, the Preliminary Decision and proposed related actions, including any deletions, minor changes, and summary of comments and Division responses will be issued as a subsequent Final Finding and Decision and Mineral Order 1240 without further notice. All related actions will be developed separately. However, approval of any action is dependent upon one another. One action will not proceed without approval of all actions.

Only persons from whom the Division receives timely, written comment during the identified comment period will be eligible to file a request for reconsideration of the Final Finding and Decision and Mineral Order 1240. Upon approval and issuance of a Final Finding and Decision,

a copy of the decision, orders, and amendment will be made available online at <http://landsales.alaska.gov/> and sent with an explanation of the request for reconsideration 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, WEDNESDAY, MAY 20, 2020**

**VIII. 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. After issuance of a Final Finding and Decision recommending sale to a preference right applicant, a notice to proceed to appraisal will be issued. Within two years from the date of the notice to proceed to appraisal, the applicant must hire an appraiser from the Department's approved appraiser list. The appraiser must apply for appraisal instructions issued by the Division, and then must submit a completed fair market value appraisal to the Division in accordance with the appraisal instructions.
3. 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 the following to the Division:
  - A completed and signed Declaration of Intent Form;
  - A signed and notarized Relinquishment of Land Lease form;
  - A signed and notarized Veterans Land Discount form (if applicable);and
  - Payoff amount plus patent application and recordation fees OR minimum 5% of the purchase price as deposit plus land sales contract application and recordation fees. Fees are established under to 11 AAC 05.100 & 200, and are subject to change. Some fees have been reduced by Director's Order Number 3.
4. 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. 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.

*The applicant must complete steps 1-5 above by May 1, 2023, three months before the expiration date of the lease on August 20, 2023 in order to ensure the applicant has a signed land sales contract before the lease expires. Failure to do this may result in the loss of the right to purchase this parcel of land or cause the applicant to enter into a lease renewal and incur associated costs.*

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

## **IX. Discussion and Alternatives**

The following alternatives were considered.

### Alternative One: Sell

Offer the subject parcel for noncompetitive sale under AS 38.05.102 as proposed in this decision.

Alternative one provides settlement land to the private sector, generates revenue for the state, continues historical use of the parcel as a business and residential site, provides a solution to a potential contamination issue should one still exist, and mitigates long-term land management costs for the parcel. This option aligns with state land management plans and supports the state's goals of providing land for settlement purposes.

Under this option, the state will not be able to use the parcel for another purpose in the future. Area plans require that surrounding land be retained in state ownership and management intent if for habitat and recreation. However, the parcel is located next to the highway, and is already developed and in use. The sale of this parcel neither changes the character of current land nor further disrupts wildlife, recreationalists or other land uses.

After considering the strengths and weaknesses of this option and alternative options discussed below, the Division finds that the benefits of selling the land noncompetitively outweigh the drawbacks. It is in the best interest of the state to sell the parcel as proposed in this decision, and this is the preferred alternative.

### Alternative Two: Lease

The Division may issue a lease renewal to the applicant.

Under alternative two, the Department issues a lease renewal to the applicant. This alternative is authorized under AS 38.05.102. This option retains a long-term interest in the land by the State, allowing the land to be used for other purposes in the future. It also allows for annual lease rentals to be collected by the state for a specified amount of time.

It does not provide long-term settlement land to the private sector or give the applicants a long-term interest in land needed for assurances such as passing land and improvements to heirs or

obtaining bank loans (depending on the lease term). It does not address liability associated with contamination, should any still exist. It also not the option for which the applicant applied: the leaseholder applied to purchase the property, though the state may offer the applicant a lease instead.

Issuance and maintenance of leases costs the state valuable resources that might be used elsewhere. After weighing the advantages and drawbacks listed above the Division has determined that lease is not in the best interest of the state or the applicant, and this alternative is not preferred.

Alternative Three: Retain

The Division may take no action and retain the subject parcel. The benefits of this obtain are that the land may be used for other purposes consistent with surrounding land management intent for the area.

Under Alternative three, the Department expends resources managing the land, while forgoing the income that could have been generated by a sale. The applicant will be required to remove improvements from the land at the expiration of the lease. The applicants may choose to move to a location far from Tok, negating any economic support the habitants might have provided to that community. Last, the parcel has a history of contamination caused by the lease of the parcel, and it is in the state's best interest to convey the parcel out of state ownership.

Retaining the subject parcel in state ownership is not in the best interests of the state. This alternative is not preferred.

Recommendation and preliminary decision with signatures are on the next page.

**X. Recommendation and Preliminary Decision**

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 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 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.

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]  
Jane Boer  
Natural Resource Specialist  
Land Sales Section  
Division of Mining, Land and Water  
Department of Natural Resources

\_\_\_\_\_  
Date of Signature

Approved by:

[signature on file]  
Rachel Longacre, Section Manager  
Land Sales Section  
Division of Mining, Land and Water  
Department of Natural Resources

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Date of Signature