

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

**FINAL FINDING AND DECISION – ADL 30089
Noncompetitive Sale to Preference Right Applicant
pursuant to AS 38.05.102**

and

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

This Final Finding and Decision complements and updates the Preliminary Decision for ADL 30089 issued on April 8, 2020 which is attached.

I. Recommended Actions

Approval of Noncompetitive Preference Right Sale ADL 30089

Approval of Mineral Order (Closing) MO 1240

Primary Action: The Department of Natural Resources (Department), Division of Mining, Land and Water (Division), Land Conveyance Section (Section) received an application to purchase a parcel of state-owned land pursuant to Alaska Statute (AS) 38.05.102. The Final Finding and 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.

Related Action: This Final Finding and 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. Mineral Order No. 1240 accompanies this Final Finding and Decision.

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.

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III. Public Participation and Input

Pursuant to AS 38.05.945, a public notice announcing the Preliminary Decision for the proposed noncompetitive sale and a draft of the mineral closing order along with the solicitation for public comment was published and distributed in compliance with the above statute in the following manner:

- Posted under State of Alaska Online Public Notice from April 9, 2020 to May 21, 2020.
- Posted on DNR Land Sales website from April 9, 2020 to May 21, 2020.
- Mailed, with a request to post for 30 days, to the Tok, Glenallen, Tanacross, Mentasta Lak, Gakona, and Slana post offices per *AS 38.05.945(c)(4)*.
- Mailed, with a request to post for 30 days, to the Glenallen, Tok, and Copper Valley Community libraries.
- Mailed to the AHTNA, Inc. per *AS 38.05.945(c)(2)-(3)*.
- Mailed to Mentasta Lake Traditional Council, the Tok Native Association, Tanana Chiefs, and the applicant. There were no adjacent landowners within the vicinity to notify.
- The Alaska Center for the Environment, the Alaska Soil and Water Conservation District, the Alaska Miners Association, and University of Alaska Land Management Department received notification by email.

The public notice stated that written comments were to be received by 3:30PM, May 20, 2020 in order to ensure consideration and eligibility to appeal. For more information, refer to the attached Preliminary Decision.

IV. Comments Received

Agency review was conducted concurrently with public notice. We received two written comments during the agency review and public comment period. These comments are summarized and addressed as follows:

From the Department's Division of Mining: The Division of Mining has no objection to the land sale or the Mineral Closing Order.

Response: The Division appreciates review of the proposed sale and Mineral Closing Order.

From the Alaska Department of Fish and Game: The Alaska Department of Fish and Game (ADF&G) has reviewed the proposed non-competitive land sale of Tract A of ASLS 98-35 within Sections 17 and 20, T14N, R11E, CRM. Given the long-term occupancy and use of this property, its conveyance would not appear to result in any adverse impacts to fish and wildlife habitats, populations, or our ability to manage these resources. However, we support the inclusion of any easements or setbacks as described in the Preliminary Decision document, to include the existing 50-foot public access easement depicted on Plat 99-10 Fairbanks Recording District (FRD), Section Line Easement and RST 188 (Slana-Tanana Crossing) that may be used as public access to public lands and waters.

Thank you for the opportunity to review and comment on this proposed conveyance of state land.

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Response: The Division appreciates ADF&G review. This Final Finding and Decision incorporates easements as recommended in the Preliminary Decision and supported in ADF&G's comment.

V. Traditional Use Finding

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. The Division received no comments regarding traditional uses during public notice.

VI. Modifications to Decision

After issuance of the Preliminary Decision, coordination with Division Realty and SAIL Sections and Department of Law resulted in a technical change to the Decision and changes to the stipulations required before the proposed sale may occur. The Preliminary Decision and recommended action is modified as follows:

Modification One: In the Preliminary Decision on page 9 the Division discloses that in 2011, Jeff S. and Carol L. Burwell signed a "partial relinquishment form and environmental hazard evaluation affidavit." This Final Finding and Decision clarifies that the form relates to Tract B of ASLS 98-35 and not Tract A, which is the subject parcel proposed for sale. Because the form certifies that there are no hazardous materials on Tract B, this demonstrates that the Burwells understand that Tract A, the parcel they are acquiring, has a contamination history.

Modification Two: The Stipulations Section is modified to include a requirement to sign an affidavit acknowledging the contamination history associated with the parcel proposed for sale, and accepting responsibility for any claim, cause of action, liability, required remedial action, or response action arising in connection with the contamination. The affidavit is attached to this Final Finding and Decision as Attachment A, which includes Exhibit 1 to the affidavit.

Modification Three: Past contamination of the parcel will be disclosed in the Quitclaim Deed (QCD) with the following language:

The sale is subject to:

The hazardous substances contamination history of the lands sold under this QCD that has been fully disclosed to the buyers. The buyers have acknowledged the disclosure in their affidavit attached hereto. Exhibit 1 to the affidavit, also attached hereto, is a document recorded April 24, 1998 at Book 1062, Pages 54-57, Fairbanks Recording District.

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VII. Stipulations

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

1. As a condition of sale, the applicant must sign Attachment A: Affidavit Acknowledging Condition of Land and Releasing the State from Related Liability.
2. The applicant, who will continue to lease the parcel until it relinquishes the leasehold at the time of purchase, 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.
3. 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.
4. 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 signed Affidavit Acknowledging Condition of Land and Releasing the State from Related Liability (Attachment A);
 - A completed and signed Declaration of Intent Form;
 - A signed and notarized Relinquishment of Land Lease form;
 - Payoff amount plus QCD 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.
5. Prior to and until 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.

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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.

VIII. Final Finding and Decision

The Land Conveyance Section recommends proceeding with the action as described in the Preliminary Decision and amended herein. This action is undertaken under relevant authorities.

The findings above have been reviewed and considered. The Department recommends proceeding with the proposed action as described in the Preliminary Decision and amended in this Final Finding and Decision. Public notice has been accomplished in accordance with AS 38.05.945, and comments received were considered. The case file has been found to be complete and the requirements of all applicable statutes have been satisfied.

(Signature on file)

Recommended by: Rachel Longacre
Section Manager
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

(10/28/2020)

Date

Under the authority of the applicable statutes, it is in the best interest of the state to proceed with the recommended action(s) as described in this Final Finding and Decision.

(Signature on file)

Approved by: Martin W. Parsons
Director
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

(11/9/2020)

Date

(Signature on file)

Approved by: Corri A. Feige
Commissioner
Department of Natural Resources
State of Alaska

(11/12/2020)

Date

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Reconsideration Provision

A person affected by this decision who provided timely written comment or public hearing testimony on the preliminary decision may request reconsideration, in accordance with *11 AAC 02*. Any reconsideration request must be received within 20 calendar days after the date of "issuance" of this decision, as defined in *11 AAC 02.040(c) and (d)*, and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. Under *11 AAC 02.030*, appeals and requests for reconsideration filed under *11 AAC 02* must be accompanied by the fee established in *11 AAC 05.160(d)(1)(F)*, which has been set at \$200 under the provisions of *11 AAC 05.160 (a)-(b)*.

If reconsideration is not requested by that date or if the commissioner does not order reconsideration on their own motion, this decision goes into effect as a final order and decision on the 31st calendar day after the date of issuance. Failure of the commissioner to act on a request for reconsideration within 30 days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request reconsideration of this decision in accordance with *11 AAC 02* before appealing this decision to Superior Court. A copy of *11 AAC 02* may be obtained from any regional information office of the Department of Natural Resources.