

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

**Proposed Non-competitive Sale to Preference Right Applicant,
Colaska, Inc.**

PRELIMINARY DECISION – ADL 231575

pursuant to
AS 38.05.035 (b)(7)

and

PROPOSED RELATED ACTIONS

Mineral Order (Closing) – AS 38.05.185 and AS 38.05.300

PUBLIC COMMENT PERIOD ENDS 3:30PM, WEDNESDAY, APRIL 10, 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 Colaska, Inc. (Colaska) to purchase two parcels of State land pursuant to *Alaska Statute (AS) 38.05.035(b)(7)*. The proposed decision will allow one of the parcels to be sold through a non-competitive sale to the applicant and the other parcel to be denied purchase. The parcels are located at Mile Post 78 of the George Parks Highway (Parks Highway), and collectively, are approximately 34 acres in size. The legal description for the subject parcels is Government Lots 8 & 9 located within Section 6, Township 20 North, Range 4 West, Seward Meridian, according to U.S. Survey (USS) 9031 approved by the United States Department of the Interior, Bureau of Land Management. See Attachment A.

Proposed Related Actions: The Preliminary Decision is dependent upon adoption of a Mineral Order pursuant to *AS 38.05.185*. A draft Mineral Order (Closing) document will accompany this Preliminary Decision for public review.

Comment Period: The public is invited to comment on this Preliminary Decision of the proposed non-competitive sale and Mineral Order 1221. **The deadline for comments is 3:30 PM WEDNESDAY, APRIL 10, 2019.** See the attached Public Notice for information on how to submit comments. Please submit comments regarding the Preliminary Decision and each proposed related action separately.

Authority: The Department has the authority under *AS 38.05.035(b)(7)* 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*. The Department will also close these parcels of State land to mineral entry pursuant to *AS 38.05.185 and AS 38.05.300*.

Administrative Record: The administrative record for the proposed actions consists of the case file for this applicant, ADL 231575. Also incorporated by reference are additional files and documents listed throughout this decision.

Scope of the Decision: The scope of this decision is limited to determining if the applicant and the subject parcels qualify under the listed statute, if it is in the state's best interest to sell the subject parcels, and if it is in the state's best interest to sell the subject parcels to the applicant.

The proposed decision recommends that only Government Lot 9 be sold through a non-competitive land sale to the applicant under *AS 38.05.035(b)(7)*, Remnant Preference Right.

The applicant is responsible for bearing the cost of the public notice, survey and appraisal. 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 related actions will be issued concurrently with the Final Finding and Decision. These actions are described in more detail in the section **Planning, Classification, and Mineral Order**.

Description:

Location: The subject parcels are located within Section 6 of Township 20 North, Range 4 West, Seward Meridian. This area is on USGS Quad map Tyonek D-1. The application is for Government Lots 8 and 9 located near Milepost 78 of the George Parks Highway.

Municipality/Borough: The subject parcels are located within the Matanuska-Susitna Borough.

Native Regional/Village Corporations/Councils: The regional corporation is Cook Inlet Region, Incorporated (CIRI). Montana Creek Native Association land is approximately 3 miles away from the subject parcels.

Legal Description: The parcels are Lots 8 & 9 of USS 9031 located within Section 6 Township 20 North, Range 4 West, Seward Meridian.

Title:

The State received title to the land on December 31, 1991, under federal patent number 50-92-0132. The state file is GS 238. Title Report number 11610 was issued on February 25, 2019, third-party interests are more thoroughly described in Other Conflicts or Pending Interest section of this document. The parcels are subject to the reservations, easements, and exceptions contained in the federal patent.

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 parcels are within the boundaries of CIRI. There are no Native interests identified with these parcels.

Other Conflicts or Pending Interests: The Alaska Stand Alone Gas Pipeline Right-of-Way (ADL418997) affects Lot 8. Additionally, the Alaska Rail Road Corporation (ARRC) requested that the Division convey a small portion of Lot 9 to improve travel in the Kashwitna area (ADL 232150). The Division proposes to close ARRC's ADL 232150 application with the approval of a Final Finding and Decision under ADL 231575. See page four of this document for further discussion.

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 September 11, 2012, Colaska applied to purchase Government Lots 8 and 9 pursuant AS 38.05.035(b)(7). Colaska operates a large gravel extraction operation to the north and east of Lots 8 and 9. Colaska's interest in Lot 8 and 9 is for the gravel resource. In Alaska, gravel is part of the land estate, not the mineral estate. The Division held discussions with Colaska on purchase of the land verses the Division issuing a material sale for the gravel to Colaska. It was agreed that so long as the Division received a purchase price that considered the value of the gravel, selling the subject parcel to Colaska was a benefit to both parties. See the **Compensation/Appraisal** section from more information.

Lots 8 and 9: Land Sales completed its evaluation of Colaska's application that Lots 8 and 9 should qualify as remnant land allowing the Department to sell both lots through a non-competitive land sale. However, after review of the applicable statute, Land Sales determined that Lot 8 does not meet the statutory requirement for purchase under AS 38.05.035(b)(7) since Lot 8 is situated immediately adjacent to the Parks Highway. Lot 9, on the other hand, is bordered by Colaska property on three sides, with the ARRC

exclusive use easement to the west. This exclusive-use easement is under Bureau of Land Management case file AA 55130. Furthermore, Lot 9 does not have public access. Colaska does have a private easement with ARRC to cross the railroad in the vicinity of Lot 9. Therefore, the applicant has access to Lot 9. Lot 9 is less than 20 acres.

Prior to Colaska's application, ARRC requested that the Division convey a small portion of Lot 9 to the corporation. ARRC's request was serialized as ADL 232150. Specifically, ARRC requested conveyance of a 100-foot wide strip of Lot 9 for realignment of ARRC's right-of-way. Colaska and ARRC subsequently entered into an agreement which provided that Colaska would deed ARRC's desired interest in the portion of Lot 9 to the railroad if Colaska received approval to purchase the entirety of Lot 9 from the Division. In light of this agreement, the Division proposes to close ARRC's request upon approval of the larger conveyance to Colaska considered herein. Closure of ADL 232150 and approval of ADL 231575 will be linked actions for the purpose of appeal.

Planning, Classification, and Mineral Orders:

DNR Land Use Plan: The subject parcel is located within the Southeast Susitna Area Plan (SSAP), identified as planning unit K-58, in the Kashwitna Region. The SSAP was adopted April 28, 2008, along with Land Classification Order SC-08-001. At the time the SSAP was prepared, Unit K-58 was classified as Settlement. However, the subject parcel via Department Order 142 was designated as Mental Health Replacement Lands under ADL 229606. In June 2006, the subject parcel was formally removed from the pool of Mental Health Replacement Lands. On June 8, 2015, the Department re-affirmed K-58's management intent as settlement lands under SC-08-001DET06.

Land Classification: The State classified the subject parcel as Settlement under Classification Order (SC-08-001).

Mineral Order: The Division proposes to close the parcel to new mineral entry in accordance with *AS 38.05.185* for land disposals. If approved by the Commissioner, Mineral Order 1221 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).

Local Planning: A review of Matanuska-Susitna Borough Comprehensive-Development Plan showed no-conflict within the proposed sale area.

Easements and Setbacks to Lot 9: None.

Access: Access to Lot 9 is located at approximately Milepost 78 off the Parks Highway.

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: There is no known contamination of, or hazardous materials on, the subject parcel.

Performance Guaranties and Insurance: Not applicable to this decision.

Survey: Government Lot 9 is considered surveyed.

Compensation/Appraisal: AS 38.05.035(b)(7) requires the parcel to be purchased for fair market value. Further, AS 38.05.035(d) specifies:

“A parcel of land described in (b)(7) of this section must be sold at its fair market value as determined by the director on the basis of an appraisal completed as provided in AS 38.05.840.”

AS 38.05.840 states that land may not be sold for less than the approved, appraised market value.

As discussed above in the **Background and Discussion** section, the Division is willing to sell Lot 9 to Colaska so long as the Division receives a purchase price that considers the value of the gravel. Colaska has offered a purchase price for Lot 9 and is willing to purchase Lot 9 for either this offered price or the appraised fair market value, whichever is greater. The Division has accepted this offer.

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.

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 and Mineral Order 1221.

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 Mineral Order 1221, 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 Mineral Order 1221, 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 1221 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 an appeal of the Final Finding and Decision, and Mineral Order 1221. Upon approval and issuance of a Final Finding and Decision and Mineral Order, a copy of the decision and order 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.

DNR 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, APRIL 10, 2019**

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

1. A notice to proceed to appraisal will be issued if no appeals are received. Within two years from the date of the notice to proceed to appraisal, the applicant must hire an

appraiser, 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.

2. 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;
 - Payoff amount plus \$265 patent application and recordation fees OR minimum 5% of the purchase price as deposit plus \$405 land sales contract application and recordation fees. Fees are subject to change.
3. 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.

Alternatives: The following alternatives were considered.

Alternative 1: Sell Lot 9

Offer the subject parcel for sale as proposed in this decision. If it is in the best interest of the State, AS 38.05.035(b)(7) allows a qualified applicant to purchase State land if the relevant statutory requirements are met.

The sale of land will provide settlement land to the private sector, generate revenue for the State, and perhaps create job opportunities through Colaska from Lot 9. Therefore, it is in the best interest of the state to sell the parcel. This is the preferred alternative.

Alternative 2: Material Sale

If Colaska applied to the State to enter into a new material sale, the Department would treat it as a new material site, which in turn, would require further staff time to review the necessary gravel extraction and reclamation plans and documents in approving a material site. Additionally, if the state retains an interest in Lot 9, ARRC's purchase of a small crescent portion of Lot 9 from Colaska cannot move forward (discussed above in the **Background and Discussion**), facilitating safe train travel for ARCC in the Kashwitna area. 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. The State would need to expend resources managing the land, while forgoing the income that could have been generated by a sale. Currently, and in the foreseeable future, the subject parcel at

ARRC Milepost 193.56, has restricted public access across ARRC's Railroad Right-of-Way. 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 requirements of AS 38.05.035(b)(7). 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.

If the applicant is unable to complete the stipulations in the timeframe specified above, the Division may decide to close this purchase application or require an amended decision, including further public notice, prior to the completion of the purchase unless the delay and extenuating circumstances are pre-approved by the Division.

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:

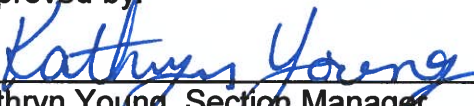


John Easton
Natural Resource Specialist III

3/8/19

Date of Signature

Approved by:



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

March 8, 2019

Date of Signature