

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

**Proposed Non-competitive Sale to Preference Right Applicant,
Marilyn Eskilida Joe**

**PRELIMINARY DECISION – AS 38.05.035(b)(5)
ADL 231963**

PUBLIC COMMENT PERIOD ENDS 5:00PM, TUESDAY, AUGUST 1, 2017

Proposed Action – Non-competitive Sale: The Department of Natural Resources (Department), Division of Mining, Land and Water (Division) has received an application to purchase a parcel of State land pursuant to Alaska Statute 38.05.035(b)(5), Pre-Statehood Preference Right. The proposed decision will allow the parcel to be sold through a non-competitive sale to the applicant, Marilyn Eskilida Joe. The parcel is in Glennallen, along of the Glenn Highway at MP 186, between the road named Memory Lane and Moose Creek on the south side of the highway. The parcel is approximately 5 acres in size. See Attachment A: Map.

The public is invited to comment on this Preliminary Decision of the non-competitive sale. The deadline for comments is August 1, 2017; see Attachment B: Public Notice for details on how to send comments and where they should be sent.

Authority: The Division has the authority under AS 38.05.035(b)(5) Pre-Statehood Preference Right, 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 under AS 38.05.035 (e) Powers and Duties of the Director.

Administrative Record: The administrative record for the proposed action consists of the case file ADL 231963. Also incorporated by reference are the Copper River Basin Area Plan adopted 1986, the Memory Lane Subdivision ADL 232021 project file, the Potential Hazardous Site ADL 231181 case file, and the Other State Land (OSL) file 131.

Scope of the Decision: The scope of this decision is limited to determining if the current applicant and the subject parcel are eligible for a preference right purchase, 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 current applicant under AS 38.05.035(b)(5), Pre-Statehood Preference Right.

The proposed decision will allow this parcel to be sold through a noncompetitive sale to the eligible applicant. This action complies with the general recommendations of the Copper River Basin Area Plan.

The preference right 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.

Description:

Location: The parcel is in Glennallen, along of the Glenn Highway at MP 186, between the road named Memory Lane and Moose Creek on the south side of the highway.

Geographic Features: Heavily treed and nearly level land adjacent to Moose Creek. Moose Creek ranges between 25 and 45 feet in width, making it a public waterbody.

Fish and Wildlife: Moose Creek is considered a high value stream due to the run of grayling that provides fishing opportunities. Alaska Department of Fish and Game (DFG) has no fish or wildlife concerns.

Potential Flood Hazard: There is no relevant Federal Emergency Management Agency (FEMA) flood information or map for the area. There may be potential for seasonal standing water during break-up or areas with permafrost. There is potential for seasonal flooding and erosion from Moose Creek.

Municipality/Borough: The subject parcel is outside of any borough and is subject to the unorganized borough platting authority.

Native Regional/Village Corporations/Councils: The regional corporation is Ahtna, Inc. Native villages or tribal councils in this area are: Native Village of Cantwell; Cheesh-Na [Christochina] Tribal Council; Chitina Village Council; Gakona Village Council; Gulkana Village Council; Native Village of Kluti-Kaah [Copper Center]; Mentasta Traditional Council; and Tazlina Village Council.

USGS Map Coverage: The subject parcel is within USGS Quad Gulkana A-4

Legal Description: Parcel will be surveyed to create a legal description prior to sale. See Attachment A for the approximate parcel configuration.

Title: Title report RPT-10071 was completed for the subject parcel and is current as of June 20, 2017. The State of Alaska received title to the subject parcel under an Omnibus Act Quitclaim Deed on June 30, 1959. The applicable State case file is OSL 131. The parcel is subject to the reservations, easements, and exceptions contained in the federal Quitclaim Deed.

Retention of and Access to Mineral Estate: In accordance with *Section 6 (i) of the Alaska Statehood Act* and *AS 38.05.125 Reservation [of Rights to Alaska]*, the State retains ownership of the mineral estate that may be in or upon the land that it sells. This retention is for all minerals, including both locatable minerals, such as gold, copper and silver; and leasable minerals such as oil, gas, coal, ore, minerals, fissionable material, geothermal resources, and fossils.

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. Access reserved to these retained interests is superior to any and all surface uses. The State may also lease these retained interests to mineral developers or allow mining locations to be staked. However, *AS 38.05.130 Damages and Posting of Bond* also provides that the land estate owner will be compensated for damages resulting from mineral exploration and development.

Other Conflicts or Pending Interest: None have been identified.

Background:

Margaret Eskilida, mother of the applicant, purchased the improvements and property from Frank and Walya Hobson in the fall of 1958. This has been confirmed by an affidavit by George Hobson, son of Frank and Walya Hobson. There are also five affidavits confirming the Margaret Eskilida and her children lived on and used the land after this purchase. The affidavits are by Copper River Second Chief Fred Ewan, Elder Markle Pete, Elder Jeannie Maxim, Elder Robert Marshall, and Elder Hazel Neeley.

Marilyn Eskilida Joe also signed an affidavit. In this document, she explained her mother did not speak fluent English and had a limited understanding on land transaction requirements when her mother paid cash with a handshake to Frank Hobson for the property and improvements in late 1957 or early 1958. Also, her mother did not understand that she could have filed for the land under the Statehood Act.

Marilyn Joe has also communicated that she lived on the property until the 1990's. Since 2000, her son, John Eskilida has periodically lived on the property.

It is noted that in George Hobson affidavit, he stated that he did not recall if Frank Hobson and Margaret Eskilida followed through with the final paperwork. It is noted that Frank Hobson had been on the land since 1943. It is unknown at what point Margaret Eskilida learned that Frank Hobson had no ownership of the land, only the improvements and that therefore, she had no ownership of the land.

There is documentation that Margaret Eskilida made multiple attempts to properly acquire the property from the state as early as 1966. In the Division's land file (OSL 131) for the property, a letter sent by a friend of Ms. Eskilida inquires how Ms. Eskilida would acquire the land under her "Indian allotment." The division replied, stating that these lands were withdrawn by the federal government by executive order on January 21, 1942. Withdrawn lands were not available for an allotment or disposal.

Ms. Eskilida made another inquire into purchasing the land in 1975. The Division receive a letter through an attorney on the option to buy under AS 38.05.035(b)(5). The Division replied to the attorney with application forms and a request for documentation proving qualifications to buy under this statute. The Division has no record of ever receiving an application from this communication.

The next documented inquire into purchasing with the Division was in 2006. Mrs. Joe called about purchasing the property. The Division sent a response letter on the process and costs, and included applications forms.

An application to purchase was received by the Division on July 25, 2014. Accompanying the application are:

- Six affidavits with signed dates from 2006 to 2011.
- Photos dating from the 1972 thru 1999.
- A 2005 Ahtna, Inc. memo with maps discussing a field inspection, some history of the of the property, and options for Mrs. Joe.

Planning, Classification and Mineral Order:

DNR Land Use Plan and Land Classification: The subject parcel is located within the Copper River Basin Area Plan, adopted December 1986, Glennallen-Gulkana Management Unit 23, Subunit 23D. The subject parcel is designated Settlement and classified Settlement under Land Classification Order No. SC-79-010.

It should be noted the Subunit 23D map in the area plan (page 3-157) shows the land where this parcel is located as native selected. However, this selection was is no longer applicable.

Management intent for Subunit 23D (page 3-153) specifies that “A public recreation corridor will be retained along Moose Creek to protect fishing, swimming and greenbelt values.” This corridor is mandated by the area plan. In the *Stream Corridors and Instream Flow* section in Chapter 2 of the area plan (pages 2-47/48) recommends a minimum of 100 feet for publicly owned buffers.

However, an as-built survey has been completed of the Eskilida improvements as part of the survey work for the Memory Lane Subdivision (ADL 232012). The house, outhouse, and a portion of a mobile home are within the 100 feet recommend buffer. Excluding these improvements from the final parcel configuration defeats the purpose of the application to purchase and the intent of AS 38.05.035(b)(5). Therefore, the mandated corridor will be reserved to the state, but will be reduced to 50 feet, which will suffice in this special circumstance.

The *Stream Corridors and Instream Flow* section also specifies “a minimum residential building setback of 100 feet will be established landward form the ordinary high water mark...”. This is also mandated by the area plan. DFG initially recommend a 150-foot

building setback, but has agreed to the 100-foot building set back, which is consistent with the surrounding development in Memory Lane Subdivision.

Therefore, a 100-foot building setback from the ordinary high water mark (OHW) will be placed on the plat. Approximately 50 feet of this setback will fall within the subject parcel

Since most of the Eskilida improvements fall within the portion of the 100-foot building setback that will be within the parcel, it is highly recommended the applicant and her family or subsequent land owners move these improvements out of the building setback before any upgrades or rebuilds are done.

Mineral Order: The parcel has been previously closed to mineral entry by Mineral Order 1171. No mineral activity has been identified on this parcel.

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 surface and subsurface 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 parcel is within the Unorganized Borough. There are no local plans or local governing body.

Easements and Setbacks: The parcel will be subject to the following reservations or restrictions:

- Utility easement of 20' along the interior of the west parcel boundary abutting Memory Lane;
- Utility easement of 30' along the interior of the north parcel boundary abutting the Glenn Highway;
- Building setback of 50' from wetland areas if any are discovered;
- Building setback of 100' along the OHW mark of Moose Creek. *
- Parcel's eastern boundary will be set back at least 50' from the ordinary high water mark of Moose Creek;

Where appropriate, reservations and restrictions will be depicted on the plat and described in plat notes. There are no RS2477 trails within the parcel.

** Since most of the Eskilida improvements fall within the portion of the 100-foot building setback that will be within the parcel, it is highly recommended that the applicant and her family or subsequent land owners move these improvements out of the building setback before any upgrades or rebuilds are done. The building setback will be marked on the survey plat.*

Access: The current driveway comes off the Glenn Highway and is unauthorized by Department of Transportation. It is recommended that the applicant create new access from Memory Lane, a dedicated public right-of-way where no driveway permit is required.

Access To and Along Public or Navigable Water: It appears that Moose Creek has traditional public recreational use and, although not listed as anadromous, is of sufficient size and importance to the general region to be administratively declared a public water body. The state will retain 50 feet from the ordinary high water mark of the creek. See above section DNR Land Use Plan and Land Classification. This corridor will allow for access to and along the public waters of Moose Creek. Additional access does not need to be reserved.

Traditional Use Findings: In accordance with AS 38.05.830, a traditional use finding is required since the subject parcel is not within an organized borough. The parcel has had some type of residential use since 1943. At this time, the effects of this action on traditional use are unknown.

Hazardous Materials and Potential Contaminants: Map location for ADL 231181, a Potential Hazardous Site, indicates a possible overlap with the subject parcel. However, there is a 2010 Preliminary Assessment and Clean Up Planning Report from Shannon & Wilson, Inc. (SWI). Reference to SWI report, in particular August 2013 Site Plan, South side of Glenn Highway, Figure 3, did not indicate any concerns within the subject parcel. A follow-up May 2015 consult with SCRO revealed that a SWI report of September 2014 also made no indication of contamination sites within the area south or west of Moose Creek. During ground field inspection conducted on September 30, 2014 Division staff did observe some possible environmental hazards related to the improvements on land, some of which are in a deteriorating state and includes abandoned cars.

Note: Since most of the Eskilida improvements fall within the portion of the 100-foot building setback that will be within the parcel, it is highly recommended the applicant and her family or subsequent land owners move these improvements out of the building setback before any upgrades or rebuilds are done.

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 here proposed for conveyance. The State further assumes no liability for the removal of hazardous substances, hazardous

wastes, contaminants, or pollutants, nor for the remediation of the site should such substances eventually be found.

The Division recognizes there are potential environmental risks when previously vacant land is occupied. Many of the activities increasing these potential risks are regulated by other agencies, such as the regulation of septic system installation by the Alaska Department of Environmental Conservation.

Survey: The subject parcel has been determined to be un-surveyed. Since the parcel is within the Memory Lane Subdivision (ADL 232021) project boundary, DNR will survey this five acre parcel as part of the Memory Lane Subdivision. The applicant will be required to reimburse DNR for a prorated cost to survey the subject parcel. This prorated cost is unknown at this time.

Compensation/Appraisal: AS 38.05.035(b)(5) requires “the amount paid for the land shall be its fair market value on the date that the person first entered the land, as determined by the director.” As Margaret Eskilida paid \$400 for the property and improvements in 1958. This will be considered the date the applicant entered the land and fair market value for the property. Therefore, the purchase price for the parcel is \$400. An appraisal is not needed.

Agency Review: Agency review was conducted from June 16, 2017 through June 28, 2017. Agency comments were considered and addressed as appropriate in this Preliminary Decision. Additional comments received during the Public Notice period will be considered and addressed in the Final Finding and Decision.

Discussion: To purchase land under AS 38.05.035(b)(5), several requirements must be met. Marilyn Eskilida Joe, as an heir of Margaret Eskilida, qualifies to purchase the land. The Eskilida/Joe families have lived on the land for over four decades. In recent years, the family continues to monitor and watch over the land and improvements while working through the application and purchase process. Their long-term use of the land qualifies Marilyn Eskilida Joe to purchase the land. There is some discrepancy as to the date of entry by Ms. Eskilida and her family. The year 1958 is more often referred to in the affidavits and is therefore determined to be that entry onto the land occurred sometime during 1958. Therefore, the applicant meets the requirement of using the land prior to January 3, 1959.

The family’s attempts to purchase the land have been consistent thru the decades, either by repeated communication with the Division or thru the hope of native selection. In the last decade, they have put together documentation conclusively proving their claim to the land along with a completed application to purchase. If the Division were to deny this application, it would be an injustice to the family of Margaret Eskilida. The intent of AS 38.05.035(b)(5) is to “avoid injustice to a person or their heirs...who used...that land.”

The sale of this parcel with improvements to Marilyn Eskilida Joe is recommended.

The Division highly recommends that the applicant and her family or subsequent land owners move the improvements that fall within the portion of the 100-foot building setback that will be within the parcel before any upgrades or rebuilds are done.

Submittal of Public Comments: Pursuant to *AS 38.05.945 Notice*, DNR issues public notice inviting comment on this proposed preference rights purchase.

In accordance with *AS 38.05.946 (a) Hearings*, 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.

All timely, written comments received by the Division will be considered. All comments should clearly explain the facts on which they are based and how they pertain to the proposed action. If analysis of timely written comments received indicates the need for significant changes to this proposal, additional public notice for the affected lands will be given. Reducing the amount of land offered and making minor changes to either proposal will not be considered significant changes requiring additional public notice.

If the proposal is approved and no significant change is required, the Preliminary Decision, including any deletions, minor changes, and summary of comments and the Division's responses, may 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 or request for reconsideration on the Final Finding and Decision. Upon approval and issuance of a Final Finding and Decision, a copy of the decision may be made available online at <http://landsales.alaska.gov> and will be sent with an explanation of the appeal process to any party who provides timely written comment.

The division 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 *Attachment B: Public Notice*.

**DEADLINE TO SUBMIT WRITTEN COMMENT IS
5:00 PM, TUESDAY, AUGUST 1, 2017**

Alternatives: The following alternatives were considered.

Alternative 1: Offer the parcel for sale as proposed in this decision. If it is in the best interest of the State, AS 38.05.035(b)(5) allows an person or their heir to purchase land

they entered into pre-statehood to avoid an injustice through a non-competitive sale. The sale will provide settlement land to the private sector, generate revenue for the State, and free up state resources in trying to manage the land with improvements. Therefore, it is in the best interest of the state to sell the parcel. This is the preferred alternative.

Alternative 2: The Department will take no action and retain the parcel. Retaining this parcel is in opposition to the classification of Settlement designated in the Copper River Basin Area Plan. The State would need to expend resources managing the improvements on the parcel, while forgoing the income that would have been generated in this sale. The applicant would be denied the purchase of the parcel that has been used by the family for decades, creating an injustice. This is not in the best interest 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)(5). Alternative 1 provides accessible, quality land for private ownership.

Stipulations: The applicant will be required to complete the following stipulations before the purchase can be completed.

1. After approval of the survey by the Division, the applicant will be sent a letter of notice of the prorated survey cost to be paid to DNR within a certain timeframe.
2. Upon payment of the prorated survey cost for the parcel, the applicant will be sent a purchase letter noticing the applicant that they must submit a completed Declaration of Intent Form, a \$100 document handling fee, and the \$400 purchase cost of the parcel within a certain timeframe to complete 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.

/s/Tim Shilling
Tim Shilling
Natural Resource Manager II
Land Sales Section
Division of Mining, Land and Water

June 29, 2017
Date of Signature



Eskilida - Joe Preference Right ADL 231963

Attachment A: Vicinity Map to the Preliminary Decision for a Proposed Preference Right Sale in the Unorganized Borough

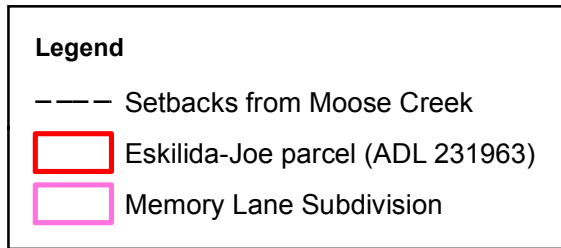


Between Moose Creek and Memory Lane, South of the Glenn Highway within Section 22, Township 4 North, Range 2 West, Copper River Meridian DB 6/16/2017

USGS QUAD 1:63,360

Gulkana A-4

For more information contact:
Kathryn Young or Dan Beutel
Department of Natural Resources
Division of Mining, Land and Water
Land Sales Section
Phone 907.269.8672 or 8599
Email landsales@alaska.gov



Attachment B

ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF MINING, LAND & WATER

PUBLIC NOTICE Proposed Noncompetitive Land Sale for ADL 231963 – AS 38.05.035(b)(5)

COMMENT PERIOD ENDS 5:00PM, TUESDAY, AUGUST 1, 2017

The Alaska Department of Natural Resources, Division of Mining, Land and Water, proposes to offer for sale state land to the current applicant, Marilyn Eskilida Joe, through a noncompetitive sale.

The parcel is in Glennallen, along of the Glenn Highway at MP 186, between the road named Memory Lane and Moose Creek on the south side of the highway. The parcel is approximately 5 acres in size.

To obtain the notice, Preliminary Decisions, or instructions on submitting comment, go to <http://landsales.alaska.gov/> or <http://notice.alaska.gov/>. For assistance in obtaining the documents by an alternative method, to request auxiliary aids, services, or special accommodations, contact DNR's Public Information Centers on State work days, Monday through Friday, between 10AM and 5PM in Anchorage at 907.269.8400 (TDD for the hearing impaired: 907.269.8411) or Fairbanks at 907.451.2705 (TDD for the hearing impaired: 907.451.2770), or the Southeast Land Office in Juneau at 907.465.3400 (TDD for the hearing impaired: 907.465.3888), or go to <http://dnr.alaska.gov/commis/pic/> for additional contact information. Individuals who require special assistance must request assistance from the Public Information Center in Anchorage no later than 4:00 PM, JULY 25, 2017.

Pursuant to AS 38.05.945 Notice, the public is invited to submit comment on the Preliminary Decision for which notice is being conducted. **The deadline for public comment is 5:00PM, AUGUST 1, 2017.** Only persons from whom DNR DMLW LSS receives timely, written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision. Written comment may be received by fax, email or postal mail. To submit comments or for direct inquiries, contact DNR Land Sales, 550 W. 7th Ave., Suite 640, Anchorage AK 99501; fax # 907.269.8916; landsales@alaska.gov. If you have questions, call DNR Land Sales at 907.269.8594.

If no significant change is required, the preliminary decision, including any minor changes and a summary of comments and responses, will be issued as the final finding and decision without further notice. A copy of the final finding and decision will be sent to any persons who commented timely on that preliminary decision.

DNR reserves the right to waive technical defects in this notice.