

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

**Proposed Non-competitive Sale to Preference Right Applicant,
Mary Dreifuerst**

**PRELIMINARY DECISION – ADL 231904
pursuant to AS 38.05.068**

and

PROPOSED RELATED ACTION

Mineral Order (Closing) – AS 38.05.185 and AS 38.05.300

PUBLIC COMMENT PERIOD ENDS 4:00 PM, TUESDAY, APRIL 24, 2018

Proposed Action, Non-competitive Sale: The Department of Natural Resources (Department), Division of Mining, Land and Water (Division) has received an application from Mary Dreifuerst to purchase a parcel of state land pursuant to Alaska Statute (AS) 38.05.068. The proposed decision will allow the parcel to be sold through a non-competitive sale to the applicant. The parcel is located at Mile 53.8 of the Sterling Highway and is approximately 2.0 acres in size. The legal description for the parcel is United States Survey (USS) 14477. See attached map.

Proposed Related Actions: This preliminary decision is dependent upon adoption of Mineral Order 1208, closing to new mineral entry. A draft of this order accompanies this preliminary decision for public review.

Comment Period: The public is invited to comment on this preliminary decision of the proposed noncompetitive sale and the proposed mineral order. **The deadline for comments is 4:00 pm, Tuesday, April 24, 2018.** See the attached public notice for information on how to submit comments. Please submit comments regarding this preliminary decision and the proposed mineral order separately.

Authority: The Department has the authority under AS 38.05.068 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.

Administrative Record: The administrative record for the proposed actions consists of the case file for this applicant, ADL 231904. 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 parcel qualify under the listed statute, if it is in the state's best interest to sell the subject parcel, and if it is in the state's best interest to sell the subject parcel to the applicant.

The proposed decision recommends this parcel to be sold through a noncompetitive sale to the applicant.

The applicant is responsible for bearing the cost of the public notice, survey and appraisal, if any. 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 section **Planning, Classification, and Mineral Order**.

Description:

Location: Milepost 53.8 of the Sterling Highway, on the north side of the highway.

Municipality/Borough: The subject parcel is located within Kenai Peninsula Borough (KPB).

Native Regional/Village Corporations/Councils: The regional corporation is Cook Inlet Region, Inc. The local native villages and tribal councils are Cook Inlet Tribal Council, Inc., Kenai Natives Association, Inc., Kenaitze Indian Tribe, Salamatof Native Association, Inc., and Village of Salamatof.

USGS Map Coverage: The subject parcel is located in USGS Quad Seward B-8.

Legal Description: USS 14477, within Sections 27 and 34, Township 5 North, Range 4 West, Seward Meridian, within the Third Judicial District, Alaska.

Title:

The State received title to the land on January 31, 2018 under federal patent 50-2018-0038. The state file is NFCG 52. Title Report 10577 was issued February 27, 2018. No third-party interests were identified. The parcel is 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 parcel is within the boundaries of Cook Inlet Region, Inc. There are no native interests identified with this parcel.

Other Conflicts or Pending Interest: None.

Background and Discussion:

The original applicant, Betty Fuller, held a valid United State Forest Service (USFS) permit for the use of the land she applied to purchase under AS 38.05.068. She and her husband (deceased) lived on the property for decades, building and developing the property over those years. Several structures, including their home and gun shop, are located on the parcel.

As the land was under federal ownership at the time Mrs. Fuller applied, her application to purchase from the state could not move forward.

Betty Fuller passed away on June 5, 2014. Mary Dreifuerst became heir of the USFS permit and completed the federal process to have the USFS permit issued to her. With the transfer of the USFS permit to Mrs. Dreifuerst, the state application to purchase also transferred to her.

According to AS 38.05.068, land subject to a valid existing USFS permit in effect on the day before the land is patented to the state, that land shall be offered for sale to the permittee. Mary Dreifuerst held a valid, existing USFS permit on the day before patent was issued to the state and is therefore eligible to purchase this property.

Mrs. Dreifuerst is also the owner of the buildings on the property. It would be appropriate to sell the property to Mrs. Dreifuerst because that would bring the land and buildings under one owner. This also benefits the state by removing the split ownership of buildings and land between the state and Mrs. Dreifuerst.

Planning, Classification, and Mineral Orders:

DNR Land Use Plan: The subject parcel is located within the Kenai Area Plan (KAP), adopted January 2000. As this was federal land until January 31, 2018, the subject parcel is not listed in the KAP.

Land Classification: Since the parcel was excluded from KAP, it is unclassified. 11 AAC 55.040 (i) (3) allows for the conveyance of land to be disposed of without classification under certain statutes. This regulation reads:

11 AAC 55.040 Classifications

- (i) Until land has been classified, a disposal or transfer of state land or an interest in state land, including timber and materials, will not be allowed except for
 - (3) a conveyance under AS 38.05.035 (b) and (c), 38.05.068, 38.05.087, or 38.05.820;

As this proposed conveyance is under AS 38.05.068, the subject parcel can be sold to the applicant without classification of the land prior to conveyance.

Mineral Order: The Division 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 1208 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.

Generally, 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: A review of the KPB Comprehensive Plan found no objection or conflict with this proposal. The subject parcel is outside the boundaries of the Cooper Landing Land Use Plan.

Easements and Setbacks: The subject parcel is transected by the section line between sections 27 and 34. Per AS 19.10.010, the subject parcel now has a section line easement of 50' on each side, for a total of 100', created at the time the land was conveyed to the state from the federal government. This easement is currently unsurveyed and not platted.

No setbacks will be applied to this parcel.

Access: Access to the parcel is directly from the Sterling Highway.

Access To and Along Public or Navigable Water: This parcel is not adjacent to any water bodies.

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

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.

Survey: The parcel has already been surveyed by the federal government as part of the process to patent the land to the State of Alaska.

Compensation/Appraisal: Under 11 AAC 67.052. Sales to Forest Service permittees:

“The sale price of a parcel of land sold to a Forest Service permittee under AS 38.05.068(c) will be \$800 plus the direct, individual costs associated with the sale of the parcel, including survey costs, if any; advertising costs; and any other costs unique to that parcel.”

As the parcel has already been surveyed and there are no advertising or other costs unique to this parcel, the sale price will be \$800.00.

Final Purchase Steps: If the approved and issued final finding and decision and mineral order are not appealed within the appeal period, a notice to proceed to purchase will be issued to the applicant after the appeal period. The applicant will need to complete the following and return to the state to initiate the final steps of the purchase process.

- A completed and signed Declaration of Intent Form and \$100 document handling fee;
- If applicable, a signed and notarized Veterans Land Discount form
- Payoff amount of \$800

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 the proposed mineral order.

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 mineral order, additional public notice for the affected lands will be given.

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 mineral order, 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 1208 without further notice. The related action 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 1208. Upon approval and issuance of these actions, a copy of the decision and order 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.

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
4:00 PM, TUESDAY, APRIL 24, 2018**

Alternatives: The following alternatives were considered.

Alternative 1: Sell

Offer the subject parcel for sale as proposed in this decision. If it is in the best interest of the State, AS 38.05.068 allows a qualified applicant to purchase State land if the relevant statutory requirements are met. The sale of this parcel will provide for conveyance of state land to the private sector. It will resolve the complication of the land owner, the State, being different from the owner of the improvements, the applicant. Therefore, it is in the best interest of the State to sell the parcel. This is the preferred alternative.

Alternative 2: Lease

The applicant could apply for a non-competitive lease under AS 38.05.087. The lease would require state resources to manage the lease, the land, and additional improvements on the land during the term of the lease. At the end of the lease, more state resources would be required to manage the land without compensation, unless a new lease was issued. The existing improvements on the land would continue to belong to a different party than 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 and working with the owner of the improvements on the land, while forgoing the income that could have been generated by a sale or lease. Retaining the subject parcel in state ownership is not in the best interests of the State. This alternative is not preferred.

Recommendation: The proposed action, Alternative 1, is believed to be in the overall best interest of the state and is consistent with the requirements of AS 38.05.068. 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, or a determination to stop the action. A final finding and decision will address any significant issues or concerns raised during the public review process.

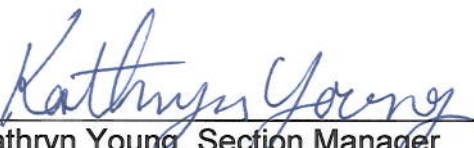
The state does not guarantee the condition or usefulness of the subject land. The land is offered "as is" with no guarantees, expressed or implied, as to its suitability for any planned or potential use, or as to the availability of any public or private services.

If conditions for which this application was made change before proceeding to final purchase steps, 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 final purchase steps 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.



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



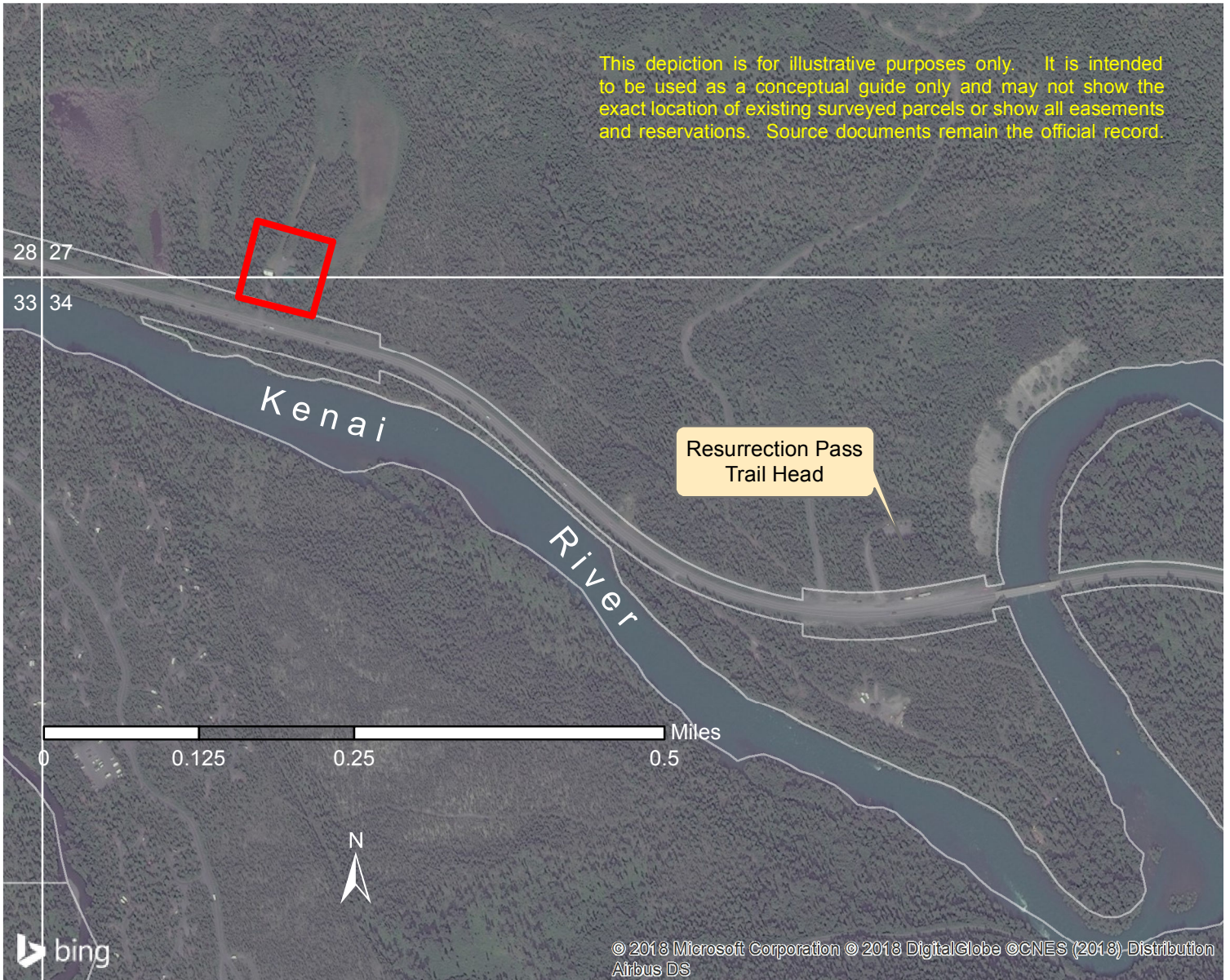
Date of Signature



Mary Dreifuerst Preference Right ADL 231904

Vicinity Map

Proposed Preference Right
Sale in the Kenai Peninsula
Borough



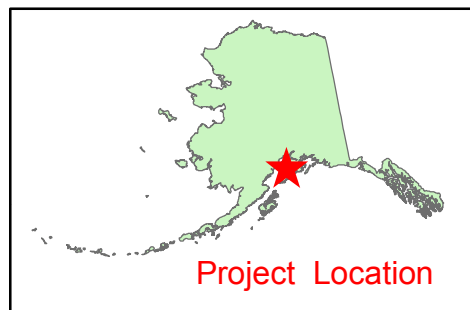
US Survey No. 14477 Within
Portions of Sections 27 & 34
Township 5 North,
Range 4 West
Seward Meridian

JWT 3/16/2018

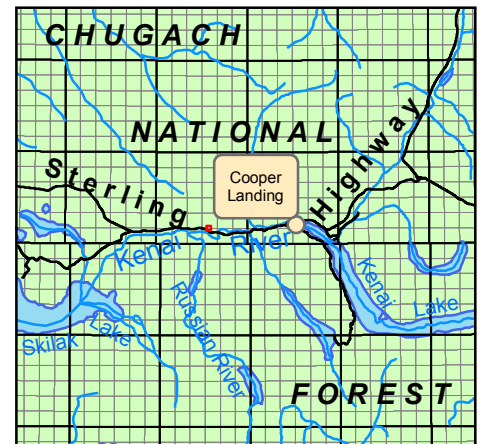


Mary Dreifuerst
Preference Right

USGS Quad 1:63,360
Seward B-8 Quadrangle
For more information contact:
Kathryn Young, Section Manager
Department of Natural Resources
Division of Mining, Land, and Water
Land Sales Section
Phone 907 269-8672
Fax 907 269-8916
Email kathryn.young@alaska.gov



Project Location



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

**DRAFT
MINERAL ORDER No. 1208**

 X **Closing Lands to Mineral Entry** _____ Opening Lands to Mineral Entry

- I. Name of Mineral Order: Preference Right Sale to Mary Dreifuerst – ADL 231904
- II. Reason for Mineral Order: This Mineral Order is based upon the attached Commissioners' Administrative Finding, applicable statutes, and the written justification contained in the following:
 Preliminary Decision, Preference Right Sale to Mary Dreifuerst – ADL 231904, March 20, 2018, and the subsequent Final Finding and Decision for same Land Sale pursuant to AS 38.05.035(e) and AS 38.05.068
- III. Authority: AS 38.05.185 and AS 38.05.300.
- IV. Location and Legal Description: USS 14477, within Sections 27 and 34, Township 5 North, Range 4 West, Seward Meridian
- V. Mineral Order: This order is subject to valid existing rights and is issued under the authority granted by AS 38.05.185 – AS 38.05.275 to the Alaska Department of Natural Resources. In accordance with AS 38.05.185(a), I find that the best interests of the State of Alaska and its residents are served by closure of the land described in this mineral order to entry under mineral location and mining laws of the State of Alaska. The above described lands are hereby **closed** to entry under the locatable mineral and mining laws of the State of Alaska.

Concur:

Brent Goodrum, Director
Division of Mining, Land and Water
Department of Natural Resources

Date

Approved:

Andrew T. Mack, Commissioner
Department of Natural Resources

Date

**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND, & WATER
LAND SALES SECTION**

PUBLIC NOTICE

Requesting Input for Proposed Non-competitive Sale to
Preference Right Applicant, Mary Dreifuerst, ADL 231904
Preliminary Decision under AS 38.05.068 and
Proposed Related Action: Mineral Order 1208 (Closing)

COMMENT PERIOD ENDS 4:00 PM, TUESDAY, APRIL 24, 2018

This proposed land sale for 2.0 acres is located at Mile 53.8 of the Sterling Highway.

To obtain the notice, Preliminary Decision, or instructions on submitting comment, go to <http://dnr.alaska.gov/mlw/landsale/> or <http://aws.state.ak.us/OnlinePublicNotices/>. 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, Monday, April 16, 2018.

Pursuant to *AS 38.05.945 Notice*, the public is invited to submit comment on the preliminary decision or the proposed mineral order, for which notice is being conducted concurrently. If commenting on more than one proposed action, separate comments should be submitted for each. **The deadline for public comment is 4:00 pm, Tuesday, April 24, 2018.** 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 Kathryn Young, Land Sales Section, 550 W 7th Ave, Suite 640, Anchorage, AK 99501, fax # 907.269.8916, kathryn.young@alaska.gov. If you have questions, call Kathryn Young at 907.269.8672.

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 the preliminary decision.

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