

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

FINAL FINDING AND DECISION

of a
Tideland Conveyance in the City and Borough of Juneau
ADL 109052 – City and Borough of Juneau
AS 38.05.035(e), AS 38.05.825

And its
RELATED ACTIONS:
Amendment to the Juneau State Land Plan SE-93-004A10
AS 38.04.065
Land Classification Order CL SE-93-004A10
AS 38.04.065 and AS 38.05.300

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) dated January 15, 2021. The PD (attached) has received the required public review.

I. Recommended Actions

The State of Alaska, Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) recommends conveying approximately 4.73 acres of State-owned tide and submerged lands within Gastineau Channel in the downtown Juneau harbor, as described in the ADL 109052 PD, pursuant to *AS 38.05.825 Conveyance of tide and submerged land to municipalities*.

There are two related actions with this proposal:

Area Plan Amendment: DNR proposes to amend the Juneau State Land Plan (JSLP, adopted 1993). The amendment will amend the designation of Subunit 6a8 to add Waterfront development (Wd) to the existing designations of Wildlife Habitat (Hb) and Fish and Wildlife Harvest (Hv). No changes to the management intent are proposed.

Land Classification Order: In relation to the Area Plan Amendment, DNR proposes to reclassify the project area in a Land Classification Order from Wildlife Habitat Land to Waterfront Development Land and Wildlife Habitat Land.

Public notice for these related actions was conducted concurrently with the notice for the primary action's PD.

II. Authority

DNR has the authority under *AS 38.05.825 Conveyance of tide and submerged land to municipalities* to convey State-owned lands suitable for occupation and development when requested by the municipality unless it is found that public interest in retaining state ownership clearly outweighs municipal interest, and if the land is: within the boundaries of the municipality;

Final Finding and Decision

City and Borough of Juneau – ADL 109052

Page 2 of 5

the use does not unreasonably interfere with navigation or public access; the municipality has applied for conveyance; the land is not subject to a shore fisheries lease under *AS 38.05.082 Leases for shore fisheries development; account*; the land classification is consistent with or compatible with the proposed use; and the land is required for a public or private development approved by the municipality.

For related actions, *AS 38.04.065 Land Use Planning and Classification*, *AS 38.05.300 Classification of Land*, and *AS 38.05.185 Generally* allow for amendments and special exceptions to area plans, land classifications, and mineral orders.

III. Public Participation and Input

Pursuant to *AS 38.05.945 Notice*, public notice inviting comment on the PD for the proposed primary action was published and distributed in the following manner:

- Posted under State of Alaska Online Public Notice from January 15, 2021 to February 18, 2021.
- Notice mailed to the City and Borough of Juneau per *AS 38.05.945(c)(1)*.
- Mailed to the Juneau, Douglas, and Mendenhall Valley public library branches, and postmasters at Federal Station, Mendenhall, Auke Bay, and Douglas post offices with a request to post for 30 days, per *AS 38.05.945(c)(4)*.
- Mailed to the Sealaska Regional Corporation per *AS 38.05.945(c)(2)-(3)*.
- Mailed to 45 landowners within 0.5 miles of the conveyance along with Federally Recognized Tribes and Native Village Corporations.
 - Federally Recognized Tribes
 - Douglas Indian Association
 - Central Council of Tlingit and Haida Tribes of Alaska
 - Village Corporations
 - Goldbelt Incorporated
- Emailed notice to the Southeast Alaska Soil and Water Conservation District, Trustees for Alaska, and all State agencies who received the agency review notice.

The public notice stated that written comments were to be received by 5:00 PM, February 18, 2021 in order to ensure consideration and eligibility to appeal. For more information, refer to the PD.

The final survey will be completed by an Alaska licensed surveyor. The surveyor will submit a platting application including a preliminary plat to the local platting authority prior to survey. This process will be subject to ordinances within Title 49 of the City of Juneau code. During the process, the public will have an opportunity at the local level to provide additional comment and feedback prior to final establishment of lot corners and monuments.

IV. Summary of Comments

DNR DMLW LCS received comments from the public comment period as summarized below.

DNR DMLW LCS received brief comments of non-objection from the following agencies: DNR Division of Oil and Gas, Alaska Department of Transportation & Public Facilities.

DNR DMLW LCS Response: LCS appreciates your review of the preliminary decision.

Final Finding and Decision

City and Borough of Juneau – ADL 109052

Page 3 of 5

Member of the public: As a representative for a landowner near the project area, the commenter supported the proposed tideland conveyance. The commenter stated that the Seawalk extension project will decrease traffic and promote better pedestrian safety in the area.

DNR DMLW LCS Response: LCS appreciates your review of the preliminary decision.

Alaska Department of Environmental Conservation (DEC): The commenter offered updated language to state that the program referred to as the “Cruise Ship Monitoring Program” in *Section VIII. Background and Discussion* of the PD, is called the “Division of Air Quality, Compliance Program”. In addition, the commenter stated that the program issues notice of violation and penalties for violations of the State’s air quality standard for marine vessels under *18 AAC 50.070 Marine vessel visible emission standards*, and not solely for cruise ships.

DNR DMLW LCS Response: LCS appreciates your review of the preliminary decision and will update the language in future references to the Division of Air Quality Compliance Program.

City and Borough of Juneau (CBJ): CBJ requested the rationale behind the choice of Alternative 1 over Alternative 2. Specifically, CBJ requested an explanation to how the public interest is served by retaining the additional acreage in State ownership. CBJ requests the decision of be reconsidered.

DNR DMLW LCS Response: LCS appreciates your review of the preliminary decision. Pursuant to *AS 38.05.825(a)*, “the commissioner shall convey to a municipality tide or submerged land requested by the municipality that is occupied or suitable for occupation and development if the” criteria listed in sections 1 through 6 are met.

Pursuant to *AS 38.05.825(a)(6)*, the land selected for conveyance must be “required for the accomplishment of a public or private development approved by the municipality”. CBJ’s application for conveyance included Resolution No. 2878 supporting the application to acquire tide and submerged land from DNR. The resolution approves extending the Seawalk as depicted on the supplied “Concept Plan No. 1” diagram. The land required for the Seawalk extension is privately-owned except for a small portion in the southeast corner that extends onto state-owned tide and submerged lands. This portion was included in the proposed parcel for conveyance.

The application and Concept Plan No. 1 also included a proposed mooring dolphin catwalk to allow additional cruise ship moorage area. This catwalk would extend onto state-owned submerged land. The submerged land required for this catwalk and associated mooring area for a cruise ship was included in the parcel for conveyance.

Alternative 1 continues to be the preferred alternative because the proposed parcel encompasses the area required for the mooring dolphin catwalk and Seawalk extension public development projects that were referenced in the application. CBJ’s application for conveyance did not include any additional public or private development projects that warrant the conveyance of the requested 10.2-acre parcel of state-owned tide and submerged lands. The additional requested area does not meet the requirements for conveyance promulgated in *AS 38.05.825* and retaining the lands in State ownership is in the best interest of the public and the State. CBJ may apply for a conveyance of additional

Final Finding and Decision

City and Borough of Juneau – ADL 109052

Page 4 of 5

tide and submerged lands when required for a public development approved by the municipality.

V. Modifications to Decision and/or Additional Information

The recommended action has not been modified from the original proposed action described in the PD.

Recommendation and Approval of the Final Finding and Decision follow.

Final Finding and Decision

City and Borough of Juneau – ADL 109052

Page 5 of 5

VI. Final Finding and Decision

The Land Conveyance Section recommends proceeding with the action as described in the Preliminary Decision. This action is undertaken under relevant authorities. The public interest in retaining the proposed parcel in state ownership does not outweigh the municipal interest.

The findings presented above have been reviewed and considered. Public Notice has been accomplished in accordance with *AS 38.05.945 Notice* and comments received were considered. The project file has been found to be complete and the requirements of all applicable statutes have been satisfied. The actions are consistent with constitutional and statutory intent for State-owned land and this action is undertaken under relevant authorities.

signature on file

May 18, 2021

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

Date

Under the authority of the applicable statutes, it is hereby found to be in the best interest of the State of Alaska to proceed with the recommended action(s) as described and referenced herein.

signature on file

May 18, 2021

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

Date

signature on file

May 18, 2021

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

Date

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 Ave., Ste. 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) and (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 calendar 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.

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

JUNEAU STATE LAND PLAN AMENDMENT
SE-93-004A10

Region 6 - Juneau, Management Unit 6a, Subunit 6a8

related to the
Proposed Tideland Conveyance – ADL 109052

The Commissioner of the State of Alaska, Department of Natural Resources (DNR) finds that the following amendment to the Juneau State Land Plan, described more fully in the Attachment, meets the requirements of *AS 38.04.065 Land Use Planning and Classification* and *11 AAC 55.010-030 Land Planning and Classification* for land use plans and hereby adopts the amendment. The Department of Natural Resources will manage state lands within the area of the revision consistent with this designation and management intent.

- Designation: The amendment will amend the designation of Subunit 6a8 to add Waterfront development to the existing designations of Wildlife Habitat (Hb) and Fish and Wildlife Harvest (Hv).
- Management Intent: No proposed changes to the management intent.

Approved: signature on file
Corri A. Feige, Commissioner
Department of Natural Resources

May 18, 2021
Date

ATTACHMENT

to the JUNEAU STATE LAND PLAN AMENDMENT

Region 6 - Juneau, Management Unit 6a, Subunit 6a8

related to the Proposed Tideland Conveyance – ADL 109052

Location and legal description: Located within DNR's Southeast Region, tide and submerged lands within Gastineau Channel adjacent to downtown Juneau within Sections 22, 23, 25, 26, and 36, Township 41 South, Range 67 East, Copper River Meridian, containing approximately 542 acres and referred to as Subunit 6a8 in the Juneau State Land Plan (JSLP).

Authority: The authority to revise plans derives from *AS 38.04.065(b) Land Use Planning and Classification*. *11 AAC 55.030(f) Land Use Plan* defines when a revision constitutes a plan amendment.

Current Plan: The JSLP designates Subunit 6a8 as Fish and Wildlife Harvest (Hv) and Fish and Wildlife Habitat (Hb). These designations convert to the classification of "Wildlife Habitat Land."¹ Within the JSLP, management intent for the submerged lands within Subunit 6a8 is as follows:

[T]o provide both land and water space for uses and activities which are directly related to maritime activities while minimizing significant adverse impacts on habitat and harvest for which these subunits are co-designated. Maritime activities include private boating of all types, tourism (including cruise ships, transient pleasure vessels, and floatplanes), commercial fishing, use by charter boat, floatplane activity, and any other activities involving the human use of waterbodies for sport, recreation, or commerce. Although all existing developments occur on non-state tidelands, portions of future developments such as breakwaters, marinas, and docks may require authorizations for use of state tidelands. Development directly related to maritime activities along the edges of the subunits that extend onto state tidelands and submerged lands are an allowable use if they do not pose hazards to navigation. Fill may be authorized in these subunits if consistent with the Juneau Coastal Management Plan and the guidelines in this plan.²

The JSLP description of management intent is consistent with the current and future maritime activities along the Juneau waterfront. The JSLP provides further background information on existing and future development along the Juneau waterfront and states that "Subunit 6a8 includes the tidelands and submerged lands off the Juneau waterfront. Most developments are on CBJ (City and Borough of Juneau) and privately-owned tidelands...There are a number of large docks and buildings on pilings and tidelands fill lining the downtown Juneau waterfront.

¹ Area plan "designations" indicate in general how the land described in the plan is to be managed by DNR. The two-letter designations indicate the primary and co-primary uses and resources for each subunit as designated by the plan. (JSLP 3-1) To implement the plan on state lands, DNR must "classify" state lands to reflect the intent of the land use designations made by the plan. Land classification is the formal record of uses and resources and is statutorily required for land planning. (AS 38.05.300; 38.04.065; 11 AAC 55.0200; JSLP 4-1 & 4-3)

² JSLP, 3-116.

Attachment to the Juneau State Land Plan Amendment

Region 6 – Juneau, Unit 6a, Subunit 6a8

related to a proposed Tideland Conveyance ADL 109052

Page 2 of 2

These docks serve a number of private and public purposes.” Additionally, the JSLP notes: “The waters off the Juneau waterfront are heavily used by pleasure boats, commercial fishing boats, barges, and cruise ships traveling and mooring in the channel. The channel is also used for floatplane landings and takeoffs. These waters are also valuable for sport fishing, wildlife viewing, and sightseeing. The entire area is in the view shed of downtown Juneau and Douglas Island.”³ Thus, the JSLP recognizes the significant maritime development activities that have existed and will continue to exist along the Juneau waterfront.

Proposed Plan Amendment: The amendment to add a Waterfront development (Wd) designation and Waterfront development land classification will more accurately represent the existing and future maritime development activities within Subunit 6a8. Following the amendment, the JSLP Subunit 6a8 will retain the two existing designations of Fish and Wildlife Harvest (Hv) and Fish and Wildlife Habitat (Hb). The JSLP will also retain the attending classification of Wildlife Habitat Land and the current description of management intent.

Explanation: On any parcel of land, up to three classifications may be used where the dominance of a particular use cannot be determined. As discussed in the JSLP, the submerged lands adjacent to the Juneau waterfront involve significant maritime activities, including the daily arrival and departure of several cruise ships between April and September and associated float plane and lightering activity and private boating of all types. Additionally, fishing activity occurs year-round.

As noted above, the JSLP currently has designated the Juneau waterfront as Fish and Wildlife Habitat (Hb) and Harvest (Hv). Habitat (Hb) is defined as the second-most valuable of habitat types. “Hb” habitats are highly productive components of the ecosystem where alternation of the habitat or human disturbance would reduce the yield of fish and wildlife populations whether directly or cumulatively. Fish and wildlife harvest areas (Hv) are localized, traditional harvest areas of limited size where alteration of habitat could permanently limit sustained yield to traditional users; or areas of intense harvest where the level of harvest has or is projected to reach the harvestable surplus for the resource.

This area plan amendment will add to the designation of Waterfront development (Wd) and classification of Waterfront Development Land to Subunit 6a8. The JSLP defines Waterfront development as “The use of tidelands, submerged lands, or shorelands for water-dependent or water-related facilities, usually for industrial or commercial purposes. Waterfront development includes piers, wharves, harbors, log storage, log or mineral transfer facilities, seafood processing facilities, commercial recreational facilities, and other resource development support facilities.”

The Juneau State Land Plan was adopted in 1993. The addition of the Waterfront development designation more accurately reflects the ongoing and significant maritime commercial activities of the Juneau waterfront associated with tourism. Tourism is the predominant industry along the Juneau waterfront from April through September. However, the retention of the Habitat and Harvest designations and Wildlife Habitat Land classification is appropriate because the area is vital to numerous fish and wildlife populations available for harvest throughout the year. Retaining the current designation and classification will ensure that the impacts future development may have on fish and wildlife habitat and harvest activities will continue to be assessed and mitigated prior to the approval of development projects.

³ JSLP, 3-114, 3-115.

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

LAND CLASSIFICATION ORDER
NO. CL SE-93-004A10

Related to the Proposed Tideland Conveyance – ADL 109052

I. Name: Proposed tideland conveyance in downtown Juneau, within Gastineau Channel

II. The classifications in Part III are based on written justification contained within the following:

- a Preliminary Decision for the Proposed tideland conveyance within an Organized Borough, dated January 15, 2021; and
- an Amendment to the Juneau State Land Plan No. SE-93-004A10.

III.	Legal Description	Acreage	Acquisition Authority	Existing Classification	Classification by this Action
	Tide and submerged lands within Gastineau Channel located within Sections 22, 23, 25, 26, and 36, Township 41 South, Range 67 East, Copper River Meridian, and referred to as Subunit 6a8 in the Juneau State Land Plan (JSLP).	542 acres	Alaska Statehood Act, Submerged Lands Act, Equal Footing Doctrine	Wildlife Habitat Land	Waterfront Development Land, Wildlife Habitat Land

IV. This order is issued under the authority granted to the Commissioner of the Department of Natural Resources by *AS 38.04.065 Land Use Planning and Classification* and *AS 38.05.300 Classification of Land*. The above-described lands are hereby designated and classified as indicated. Nothing shall prevent the reclassification of these lands if warranted in the public interest.

Approved: signature on file
Corri A. Feige, Commissioner
Department of Natural Resources

May 18, 2021
Date

Attachment to the Juneau State Land Plan Amendment

Region 6 – Juneau, Unit 6a, Subunit 6a8

related to a proposed Tideland Conveyance ADL 109052

Page 2 of 2

Assessment: The following alternatives are being considered:

1. (Preferred) Amend the Juneau State Land Plan as described above to add the Waterfront development designation to Subunit 6a8. Amending the plan is the preferred alternative as it will allow development of commercial maritime activities as approved by DNR.
2. (Status Quo) Do not amend the Juneau State Land Plan. This alternative is not preferred as it would disallow the development of maritime activities in this area.

Requirements of AS 38.04.065 (b): The factors identified in this section of statute have been considered in the Preliminary Decision for the proposed tideland conveyance – ADL 109052 issued on January 15, 2021 and the proposed action is consistent with that portion of the statute.



Attachment A: Vicinity Map City and Borough of Juneau ADL 109052

This map is for graphic representation only. It is intended to be used as a guide only and may not show the exact location of existing surveyed parcels or show all easements and reservations. Source documents remain the official record.



Legend

- Proposed Conveyed Parcel
- Section Lines

0 0.1 0.2 0.3 Miles

JDK 12/28/2020

**Section 25, Township 41 South,
Range 67 East, Copper River Meridian**

USGS QUAD 1:63.360
(Juneau B-2)
For more information contact:
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