

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

**FINAL FINDING AND DECISION
CONVEYANCE OF TIDE AND SUBMERGED LAND
UNDER AS 38.05.825**

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| MATANUSKA-SUSITNA BOROUGH PORT MACKENZIE ADL 232659 |
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I. SUPPLEMENT STATEMENT

This Final Finding and Decision (FFD) supplements the Preliminary Decision (PD) issued on July 7, 2017 for the proposed action which is incorporated herein.

II. RECOMMENDED ACTION

The Department of Natural Resources (DNR) has determined that Alternative 3 described in the PD is the preferred action and is consistent with the intent and requirements of AS 38.05.825. The FFD finds it is in the best interest of the state to convey the tide and submerged lands of approximately 538 acres as indicated in Table A to the Matanuska-Susitna Borough (MSB).

These state-owned tide and submerged lands approved for conveyance are subject to the recommended conditions, restrictions and reservations listed below.

Conditions, Restrictions and Reservations

1. Administration of state leases and permits in the surface estate, if any, will be transferred to the MSB when the FFD is effective. Applications for state leases or permits in the subject area that have not been adjudicated or issued will be closed.
2. Management authority for the approved tidelands will be transferred to the MSB when the FFD is effective. When approved, the borough may execute leases and permits prior to issuance of a state conveyance document in accordance with AS 38.05.825.
3. All mineral related permits, licenses, claims and leases affecting the tideland proposed for conveyance, if any, will remain under the authority of the state.
4. The MSB is subject to the requirements of the *Public Trust Doctrine* as it applies to these lands and to the requirements under AS 38.05.825.
5. Notification to the Alaska State Historic Preservation Office in accordance with AS 41.35.070(d) is required upon discovery of historic, prehistoric, or archaeological sites, locations, remains or objects.

Conveyance to Include the Following:

1. Subject to valid existing rights, including reservations, easements, and exceptions in the U.S. Patent, or other state or federal conveyance, and in acts authorizing the issue thereof; easements, rights-of-way, covenants, conditions, reservations, notes on the plat, and restrictions of record, if any.

2. Reservation of the mineral estate pursuant to AS 38.05.125; and reservation of reasonably necessary access to the mineral estate in accordance with AS 38.05.130.
3. Reservation of a continuous public access easement, 50 feet wide upland of and adjoining the ordinary high water mark of all public waters and mean high water marks of all tidal shores pursuant to AS 38.05.127 and 11 AAC 51.

Table A.
Description of Tidelands Proposed for Conveyance

| Seward Meridian | Sections | Legal Description | Acres |
|------------------------|-----------------|--|--------------|
| T014N, R004W | 35 | That portion of the SE¼ located below Mean High Water within Knik Arm; | 145 |
| | 36 | That portion of the SW¼ located below Mean High Water within Knik Arm; That portion of the SW¼ located N & W of MSB boundary line and located below Mean High Water within Knik Arm | 75 |
| T013N, R004W | 02 | That portion of the NE ¼ located N & W of MSB boundary line and located below Mean High Water within Knik Arm; That portion of the NW¼ located below Mean High Water within Knik Arm; That portion of the SW¼ located N & W of MSB boundary line and located below Mean High Water within Knik Arm | 318 |
| | | | Total: 538 |

III. AUTHORITY

The authority for conveyance of state-owned tide and submerged land is pursuant to AS 38.05.825 and the authority for the FFD is pursuant to AS 38.05.035(e).

IV. PUBLIC NOTICE

The public notice has been accomplished in accordance with AS 38.05.945.

V. RESPONSE TO COMMENTS

An individual from Palmer submitted timely comments in which he expressed doubts that MSB could properly manage the tideland area if conveyed. The full comments are in the case file.

DNR Response: DNR has adjudicated this tideland conveyance application and determined that MSB has met the requirements in AS 38.05.825 for conveyance of these state-owned tidelands to the borough. Additionally, the borough has prepared the Port MacKenzie Master Plan which accompanies this tideland conveyance application and is included in the case file. The Master Plan thoroughly addresses the proposed expansion and future management for Port MacKenzie.

VI. DISCUSSION AND FINAL FINDING AND DECISION

This FFD for the MSB tide and submerged land selection covers approximately 538 acres of state-owned tidelands intended for the purpose of constructing deep water docks and trestles in order to assist in the expansion of the borough's port district. DNR has determined in this decision that the state-owned tideland area is appropriate for conveyance to the MSB and meets the criteria under AS 38.05.825, if the area plan is amended appropriately. There would be several benefits from the conveyance of this tideland to MSB, including the creation of employment opportunities for local communities, which would stimulate economic development for both private and state interests, and the conveyance would establish a transportation link for exporting natural resources from the state. This expansion to Port MacKenzie would facilitate import and export growth while complimenting existing port operations that may be limited by land access, capacity or public access restrictions.


During the agency review process, DNR received no stipulations or objections to the proposed conveyance for these tidelands. However, the Alaska Department of Fish and Game (ADFG) had some concerns about the audio impacts to the marine mammals within the shipping lanes, but felt they could work with the borough to resolve any issues that may come up during the construction and future use of the marine area.

A Land Classification Order (LCO) and amendment to the Southeast Susitna Area Plan to re-classify a portion of unit TT-01 is included with this decision. This area will be re-classified as Waterfront Development Land, in a new unit TT-01a.


The following are findings of this Final Finding and Decision:

1. That it is appropriate to convey approximately 538 acres of state-owned tide and submerged lands to the Matanuska-Susitna Borough pursuant to AS 38.05.825.
2. That the interest of the state to retain these tide and submerged lands does not outweigh the interest of the MSB in obtaining the tideland selections.
3. That it is appropriate to prepare an LCO and amendment to the Southeast Susitna Area Plan to re-classify the selected tideland area to Waterfront Development Land.

The findings presented above have been reviewed and considered. Public Notice has been accomplished in accordance with AS 38.05.945. The case file has been found to be complete and the requirements of all applicable statutes have been satisfied. I find that it is in the best interest of the state to proceed with the conveyance of the tide and submerged land as described in the PD and this FFD.



Approved by:
Andrew T. Mack, Commissioner
Department of Natural Resources



Date

REQUEST FOR RECONSIDERATION PROCEDURE

A person affected by this decision who provided timely written comment or public hearing testimony on this decision may request reconsideration, in accordance with 11 AAC 02. Any reconsideration request must be received within 20 calendar days after the date of issuance of this decision, as defined in 11 AAC 02.040(c) and (d), and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov.

If reconsideration is not requested by that date or the commissioner does not order reconsideration on his own motion, this decision goes into effect as a final order and decision on the 31st calendar day after issuance. Failure of the commissioner to act on a request for reconsideration within 31 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.

ATTACHMENTS

Southeast Susitna Area Plan Amendment and LCO
Amendment Map
Conveyance Area Map