

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

PRELIMINARY DECISION
CONVEYANCE OF STATE LAND UNDER AS 29.65

CITY OF EDNA BAY
MUNICIPAL LAND ENTITLEMENT SELECTIONS
ADL 108519

PUBLIC COMMENT PERIOD ENDS 4:30 PM, TUESDAY, DECEMBER 15, 2020

I. PROPOSED ACTION

Preliminary Decision: Approval of Municipal Entitlement Sections ADL 108519

Attachment A: Map

Attachment B: Public Notice

Primary Proposed Action: The Alaska Department of Natural Resources (DNR), Division of Mining Land and Water (DMLW), Land Conveyance Section (LCS) proposes to convey lands selected by the City of Edna Bay (hereinafter City) in order to fulfill their general grant land entitlement under AS 29.65.030 *Determination of Entitlement for Newly Incorporated Municipalities*. The City selected 283.403 acres for conveyance as identified in Table 1. Edna Bay is located within Unit 8 of the Prince of Wales Island Area Plan¹ (POWIAP).

TABLE 1: Parcels Selected by the City of Edna Bay

CRM, T68S, R76E	Legal Description	Acreage
Sec. 22 (parcels 1, 2, 3)	Tracts J, K, L ASLS 81-116	49.963
	Government Lots 3, 4, 5	65.88
	Tract I ASLS 81-116	2.79
Sec. 33 (parcel 9)	Government Lot 5 SE1/4NE1/4	7.91 40
Sec. 34 (parcels 10,11)	Government Lots 1, 2, 3	76.86
	NE1/4SW1/4	40
Total Selected		283.403

After the initial selection process, the City made DNR aware that there were parcels that, while not appropriately classified for municipal conveyance, would benefit the city's growth and development. An area plan amendment and Land Classification Order (LCO) dated November 13, 2019 (SE-98-001A07) changed the land use classifications of six parcels in Edna Bay, Subunit 8b of the POWIAP, to conveyable classifications that more appropriately reflect the land use in the area. With their concurrence, DNR has amended the City of Edna Bay's selections to include these additional parcels, described below, in order to bring the City's acreage total closer to its overall entitlement.

- Tract Q ASLS 81-116 consisting of 10.295 acres (Parcel 4)
- Remainder Lot 1 of NW1/4 NW1/4 and E1/2 NW1/4, Section 23 ASLS 2012-68 consisting of 19.79 acres (Parcel 4)
- Tract H ASLS 81-116 consisting of 8.494 acres (Parcel 5)

¹ The Prince of Wales Island Area Plan (POWIAP), adopted in October 1998, determines the management intent, land use designations, and management guidelines that apply to all state lands in the applicable planning area. This plan forms the basis for the land use classifications that constitute vacant, unappropriated, unreserved land for purposes of determining the eligibility of state land for potential conveyance to a municipality under AS 29.65 *General Grant Land*.

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- Tract G ASLS 81-116 consisting of 7.080 acres (Parcel 6)
- Tract D ASLS 81-116 consisting of 6.057 acres (Parcel 7)
- Gov. Lots 11, 12, SW1/4 SE1/4 NW1/4, NW1/4 SE1/4 NW1/4, Section 28, Township 68 South, Range 76 East, Copper River Meridian, consisting of 32.66 acres. (Parcel 8)

Totaling approximately 84.376 acres.

With the addition of these parcels, DNR proposes to convey approximately 313 acres of state owned vacant, unappropriated, unreserved (VUU)² general grant land to the City and has determined that there are no over-riding state interests that merit retaining these selections in state ownership.

DNR proposes to reject approximately 54 acres of the City selections because the land is ineligible for conveyance or the State's interest in retaining the land outweighs the City's interest in obtaining the land. Detailed reasons are given in the Discussion section of this decision.

Public Notice of Proposal: In accordance with *AS 38.05.945 Notice*, during a period of at least 30 consecutive days, the public is invited to submit written comments on this Preliminary Decision (PD).

See **Section VII. Submittal of Public Comments** at the end of this document and *Attachment B: Public Notice* for details on how to submit a comment for consideration. If, after consideration of timely, written comments, DNR moves forward with the proposal, a Final Finding and Decision (FFD) will be issued.

II. AUTHORITY

The proposed actions in this PD are authorized pursuant to Alaska Statute (AS) and Alaska Administrative Code (AAC), particularly *AS 29.65 General Grant Land*, *AS 38.05.035(e) Power and Duties of the Director*, *AS 38.05.125 Reservation*, *AS 38.05.127 Access to Navigable or Public Water*, *AS 19.10.010 Dedication of Land for Public Highways*, *11 AAC 51 Public Easements*, and *11 AAC 55 Land Planning and Classification*.

III. ADMINISTRATIVE RECORD

The administrative record for this PD consists of Alaska Division of Lands (ADL) case file 108519, the Prince of Wales Island Area Plan (POWIAP) adopted October 1998, the Alaska Department of Fish and Game (ADF&G) Alaska Anadromous Waters Catalog & Atlas to the Catalog, Alaska Department of Environmental Conservation (DEC) Contaminated Sites Database, and the Alaska Southeast Transportation Plan. Additional files and resources are incorporated by reference.

IV. SCOPE OF DECISION

The scope of this PD is limited to determining whether it is appropriate to convey the subject parcels to the City of Edna Bay. This decision includes a review of third party interests, stipulations necessary to effectuate this decision, and an evaluation of whether the public interest in retaining state ownership of the land outweighs the City's interest in obtaining the selected lands as provided in *AS 29.65.050 Fulfillment of Land Entitlement*. In this decision, DNR will also determine whether the City's municipal entitlement land selections meet requirements under *AS 29.65.070(c) Selection and Conveyance Procedure*, and whether it is appropriate to allow the City to exercise immediate management authority for conditional sales and leases on land approved for conveyance.

² *Vacant, unappropriated, unreserved (VUU)* land is general grant land patented or tentatively approved to the state from the United States, excluding minerals as required by 6(i) of the Alaska Statehood Act, and is conveyable under the Municipal Entitlement Act (*AS 29.65*).

V. DESCRIPTION

A. Location and Geographical Features

The City of Edna Bay became organized as a second-class city in October 2014. It is located on the southeast side of Kosciusko Island. Kosciusko Island lies adjacent and northwest of Prince of Wales Island, separated by El Capitan Pass and Shakan Strait within Alaska’s southeast region. Davidson Inlet runs just southeast of Edna Bay. This area is known for large amounts of precipitation throughout the year with the average rainfall around 90 inches. Generally, the area is flat topographically, but does gain elevation inland towards rolling hills. The City has anadromous streams within its boundaries as well as estuarine areas directly off the bay itself. On the southwestern side of the island lies the small fishing community of Cape Pole, located at Fisherman’s Harbor on the outer coast of Kosciusko Island.

City/Municipality: City of Edna Bay

Meridian: Copper River (C)

Regional Native Corp.: Sealaska Corporation

Native Village Corp.: Craig Community Association

Hydaburg Community Association

Organized Village of Kasaan

Klawock Cooperative Association

Tribe: Central Council of the Tlingit and Haida Indian Tribes of Alaska

USGS Map Coverage: Craig Quadrangle (1:250,000)

Craig D-5 (1:63,360)

B. Legal Description, Land Status, and Third-Party Interests

TABLE 2 identifies the City land selections adjudicated in this decision by parcel number, Township (T), Range (R), Section (S), and includes title status, date, state case file and any third-party interests affecting those state owned. The State holds fee title to the land and mineral estates through either Patent from the United States Department of Interior, Bureau of Land Management (BLM) or Quit Claim Deed (QCD) from the Board of Regents of the University of Alaska. The State will only convey the land estate on lands approved for conveyance to the City. AS 38.05.125 requires the State retain the mineral estate.

TABLE 2.

Parcel	CRM, T68S, R76E Section: Legal	State Case File Title Document --- Date	Third Party Interests
1	Sec. 22: Tract J (ASLS 81-116)	NFCG 129 PA 50-85-0112 --- 1/4/1985 ADL 229392 QCD 1634 (SOA-UA) --- 7/10/2007 OSL 1427 Statutory QCD (UA-SOA) - 4/23/2010	None identified
2	Sec. 22: Tract I (ASLS 81-116)	NFCG 129 PA 50-85-0112 --- 1/4/1985	None identified
3	Sec. 22: Tract K, L (ASLS 81-116), Lots 3, 4, 5	NFCG 129 PA 50-85-0112 --- 1/4/1985 ADL 229392 QCD 1634 (SOA-UA) --- 7/10/2007 OSL 1427 Statutory QCD (UA-SOA) - 4/23/2010	None identified
4	Sec. 23: Tract Q (ASLS 81-116), Remainder Lot 1 of NW1/4 NW1/4 and E1/2 NW1/4 (ASLS 2012-68)	NFCG 129 PA 50-85-0112 --- 1/4/1985	ADL 107433 , Public Easement, Log Transfer Facility, Reserved in Patent, Issued ADL 106135 : Public Access Easement, Issued ADL 108271 : Trespass, Active Forest Development Road 1525 (66')

Parcel	CRM, T68S, R76E Section: Legal	State Case File Title Document --- Date	Third Party Interests
5	Sec. 22: Tract H (ASLS 81-116)	NFCG 129 PA 50-85-0112 --- 1/4/1985	None identified
6	Secs. 27, 28: Tract G (ASLS 81-116)	NFCG 129 PA 50-85-0112 --- 1/4/1985	None identified
7	Sec 28: Tract D (ASLS 81-116)	NFCG 129 PA 50-85-0112 --- 1/4/1985	None identified
8	Sec. 28: Lots 11, 12, SW1/4 SE1/4 NW1/4, NW1/4 SE1/4 NW1/4	NFCG 384 PA 50-2008-0091 --- 11/29/2007	Forest Development Road 1520000 (66') Forest Development Road 1520370 (66')
9	Sec. 33: Lot 5, SE1/44 NE1/4	NFCG 129 PA 50-85-0112 --- 1/4/1985 ADL 229392 QCD 1634 (SOA-UA) --- 7/10/2007 OSL 1427 Statutory QCD (UA-SOA) - 4/23/2010	ADL 108357, Land Sale Project, Initial Status
10	Sec. 34: Lot 1	NFCG 129 PA 50-85-0112 --- 1/4/1985 ADL 229392 QCD 1634 (SOA-UA) --- 7/10/2007 OSL 1427 Statutory QCD (UA-SOA) - 4/23/2010	ADL 108253, Management Agreement, ILMA, Issued
11	Sec. 34: Lots 2, 3	NFCG 129 PA 50-85-0112 --- 1/4/1985 ADL 229392 QCD 1634 (SOA-UA) --- 7/10/2007 OSL 1427 Statutory QCD (UA-SOA) - 4/23/2010	ADL 108357, Land Sale Project, Initial Status
	Sec. 34: NE1/4 SW1/4	NFCG 129 PA 50-85-0112 --- 1/4/1985	

VI. PRELIMINARY DECISION

A. Background

The land for this proposed municipal entitlement conveyance was acquired under statehood entitlement, National Forest Community Grant (NFCG) 129 for furthering the development and expansion of communities. The State received patent for the land and mineral estate under this entitlement on January 4, 1985.

Five parcels selected (Parcels 1, 3, 9-11) were part of the 2005 University of Alaska Land Grant, which was subsequently invalidated by an Alaska Supreme Court decision, *Southeast Alaska Conservation Council v. State of Alaska*, 202 P.3d 1162 (Alaska 2009). The VUU parcels were conveyed to the University in 2007 (See ADL 229392/QCD 1634), and after the court directed the University to convey the land back to the State in 2010, were designated Other State Land (OSL), under case file number 1427.

On February 27, 2015, DNR certified a municipal land entitlement of 319.561 acres to the City of Edna Bay pursuant to AS 29.65.030. This is the first Municipal Entitlement conveyance decision for the City.

B. Planning, Classification, and Mineral Orders

1. Planning

The land selections are all located in Unit 8, Subunit 8b within the Prince of Wales Island Area Plan (POWIAP) and are governed by the management intent and classifications found therein. The management intent and area plan designation for each management unit are described in Chapter 3 of the area plan. These area plan designations convert to land use classifications, which establish what land the State may convey under the Municipal Entitlement Act (*see AS 29.65.130(10) Definitions*).

Management intent has the same level of authority as a plan designation under 11 AAC 55.030(c)(6). In all instances, whether it is a municipal selection affected by a non-conveyable classification or a management guideline/intent that requires the State to retain land, the effect is the same: the selection is not conveyable to the Borough *unless* a plan amendment changes the classification, the management guideline/intent, or both.

2. Land Use Classification

The land selections proposed for conveyance in this decision are classified as Resource Management (RMG), Public Recreation (PUR), or Settlement (STL) which are conveyable classifications under AS 29.65. Wildlife Habitat Land (WHB) and Forest Land (FOR) are non-conveyable classifications and are not eligible for conveyance under AS 29.65. TABLE 3 shows the land use designations and classifications derived from the POWIAP for the land selections adjudicated in this decision.

TABLE 3. Subunit 8: POWIAP

Parcel	C68S, R76E, Sec: Legal Description	Designation	Land Use Classification
1	Sec. 22: Tract J (ASLS 81-116)	Ha, Ru, S	Wildlife Habitat (WHB), Public Recreation (PUR), Settlement (STL)
2	Sec. 22: Tract I (ASLS 81-116)	Gu	Resource Management Land (RMG)
3	Sec. 22: Tract K, L (ASLS 81-116) Gov. Lots 3, 4, 5	S, Ru	Settlement (STL), Public Recreation (PUR)
4	Sec. 23: Tract Q (ASLS 81-116), remainder Lot 1 of NW1/4 NW1/4 & E1/2 NW1/4 (ASLS 2012-68)	Sc	Settlement (STL)
5	Sec. 22: Tract H (ASLS 81-116)	Ru	Public Recreation (PUR)
6	Secs. 27 and 28: Tract G (ASLS 81-116)	Ru	Public Recreation (PUR)
7	Sec. 28: Tract D (ASLS 81-116)	Ru	Public Recreation (PUR)
8	Sec. 28: Gov. Lots 11,12, SW1/4 SE1/4 NW1/4, NW1/4 SE1/4 NW1/4	S	Settlement (STL)
9	Sec. 33: Gov. Lot 5, SE1/4 NE1/4	S	Settlement (STL)
10	Sec. 34: Gov. Lot 1	F	Forest Land (FOR)
11	Sec. 34: Gov. Lots 2, 3, NE1/4 SW1/4	S	Settlement (STL)

3. Mineral Orders

The mineral estate is reserved to the State pursuant to AS 38.05.125.

Mineral Order (MO) 1045 closed mineral entry to parcels in the City of Edna Bay. MO 1045 was part of the 2005 University of Alaska land grant, which was subsequently invalidated by an Alaska Supreme Court decision³. On February 7, 2012, DMLW issued MO 1118 which reopened some of the parcels that were closed under MO 1045. Parcels within Sections 22, 33, and 34 of Township 68 South, Range 76 East, Copper River Meridian remain closed to mineral entry.

³ Southeast Alaska Conservation Council v. State of Alaska, 202 P.3d 1162 (Alaska 2009).

C. Traditional Use Finding

A traditional use finding under *AS 38.05.830 Land Disposal in the Unorganized Borough* is required only within unorganized boroughs. The City of Edna Bay is a second-class city and eligible for municipal entitlement under *AS 29.65.030*; therefore, identification of traditional uses is not required. All of the City's municipal entitlement land selections are located within its legal boundary.

D. Access

Public access will be reserved in accordance with *AS 19.10.010*, *AS 19.30.400 Identification and Acceptance to Rights-of-Way*, *AS 38.05.125*, *AS 38.05.127*, and *11 AAC 51*.

Primary access to the City is via float plane or boat. A boat and seaplane dock sits off Parcel 4 in the northeast area of Edna Bay proper. Davidson Inlet serves as the major travel corridor for various watercraft in this area. Edna Bay is contiguous with Davidson Inlet and provides access to some of the City's land selections. Upland access to and through the City is limited since there are few roads and no airports. A road network developed for timber harvest covers much of Kosciusko Island, but there is no connection to the Prince of Wales Island road system. The main local roads within the City are Davidson Avenue, Charlie Creek Lane, Kusciusko Drive, and Holbrook Place. Upland access to some parcels may be accessible by snowmachines and all-terrain vehicles, depending on the season.

1. Section Line Easements

As required under *AS 19.10.010*, and in accordance with *11 AAC 51.025 Section Line Easements*, a public access easement of 100 feet wide will be reserved along each section line on lands approved for conveyance. If a section line forms a boundary of a selection being conveyed, then the easement will be 50 feet wide measured from the section line. If a section line runs through a selection being conveyed, then the easement will be 50 feet wide measured on each side of the section line, for a total width of 100 feet.

2. Trails, Rights-of-way, RS 2477, and Easements

A review of state records identified rights-of-way (ROW), easements, reservations and exceptions in the U.S. Patent affecting some of the City's land selections as disclosed in TABLE 2, above. DNR is not aware of any RS2477 or other major trails within the proposed municipal entitlement.

3. Navigable and Public Water

The State will retain ownership of the bed of navigable water, including all gravel bars and islands, and will convey the bed of public waters to the City. A survey will determine the Ordinary High Water Mark (OHWM) of the navigable waters, and the Mean High Water Mark (MHWM) on marine meandering shorelines, identify islands, and determine the specific areas to be retained by the State. At the time of survey, field work may find that a body of water or a waterway is different than identified in this decision. If this occurs, the results of the survey work will be reviewed further within DNR. If the field work is determined to be accurate, then the survey results will supersede the recommendation in this decision.

Navigable Waters: Pursuant to *11 AAC 51.035 Determination of Navigable or Public Water*, a water body is navigable if it is at least 50 acres in size or a waterway at least 50 feet wide from OHWM to OHWM. A water body will also be considered navigable if it is found it is navigable for a useful public purpose in accordance with *AS 38.05.965 Definitions*, otherwise, it will be considered public water in accordance with *11 AAC 51.035*. Additionally, ownership of land adjacent to

navigable water does not create any right of title to land below the OHWM of the navigable water.

All tidal waters are considered navigable under the Submerged Lands Act (67 Stat 29, PL 31, 5/22/1953). The MHWMM is established at the time of survey.

Public Waters: Pursuant to 11 AAC 51.035, a water body is considered public water if it is at least 10 but less than 50 acres in size or at least 10 feet but less than 50 feet wide from OHWM to OHWM. Ownership of the land under or adjacent to public water does not grant an exclusive right to use of the water (AS 38.05.126 *Navigable and Public Water*).

4. Easements To and Along Navigable and Public Water

A public access easement on the bed and 50 feet in width upland of the OHWM will be reserved on all public water bodies and waterways, and a public access easement 50 feet in width upland of the MHWMM will be reserved on all navigable waters in accordance with AS 38.05.127 and 11 AAC 51. This easement is referred to as the 'along' easement. The 'to' easement is to be established approximately once each mile and is often provided on section line easements of 50 feet in width adjacent to the section line on each side (AS 19.10.010 and 11 AAC 51.025). The 'along' easement applies to these waterbodies and the 'to' easement is intended to provide access to the 'along' easements.

An alternative upland access route may be reserved if DNR finds that access along an easement reserved under 11 AAC 51.045(d)(1) *Easements To and Along Navigable and Public Water* is difficult because of topography or obstructions.

Navigable Waters

Navigable waters may or may not be anadromous. Exposed sand or gravel bars that are within and are not above the OHWM are part of the waterbody bed. Only those lands determined to be uplands that are above the OHWM or MHWMM are intended to be conveyed.

The navigable water in this decision is marine and encompasses Edna Bay. The upland shore will have a 50-foot public access easement on those lands approved for conveyance to the City.

Public Waters

Waterbodies determined to be public waters under 11 AAC 51.035 may or may not be anadromous. The beds of public waters are to be conveyed with the adjoining approved lands.

Charley Creek in Section 22 is an anadromous water body (Catalog # 103-90-10580), as well as being considered a public water. It will have public access on the bed and 50 feet upland along the shore.

E. Reservation of Mineral Estate

A conveyance of VUU general grant land to a municipality under AS 29.65 conveys no interest in the mineral estate. All mineral related permits, licenses, claims, and leases affecting the land for conveyance, if any, will remain under the authority of the State.

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 Damages and Posting of Bond* and other applicable statutes and regulations.

F. Hazardous Materials and Potential Contaminants

It is the responsibility of the State to protect the overall public interest if there is a reasonable expectation that hazardous contamination may exist on land being proposed for disposal. Based on review of the Alaska Department of Environmental Conservation's (DEC) list of contaminated sites and comments received, no hazardous material or contamination from hazardous material is known at this time to affect these selections. The environmental risk associated with this proposed conveyance is found to be minimal, if non-existent, at the time of this PD.

The City of Edna Bay is expected to inspect these selections and familiarize itself with regards to the condition and quality of the land. The State of Alaska makes no representations and no warranties, expressed or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land proposed here for conveyance. The State assumes no liability for removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor any liability for the remediation of the site should such substances ever be identified. The City, by selecting these lands and requesting their conveyance through this PD, recognizes the surrounding areas of identified contaminated sites and will take the land "as is."

G. Survey

A state approved survey is required prior to issuance of a conveyance document. If no approved survey exists, then one must be performed by an Alaska Registered Land Surveyor under direction of the DNR DMLW Survey Section. The City of Edna Bay is responsible for the expense of any survey. A survey determination may be requested by the City at any time subsequent to the Final Finding & Decision (FFD). There is no requirement under *AS 29.65.070* to appraise the land prior to conveyance.

H. Conditional Leases and Sales

The City will receive management authority and equitable title to all land approved for conveyance in this decision once the FFD is effective. This will allow the City of Edna Bay to approve conditional leases and make conditional sales pursuant to *AS 29.65.070(b)*, but not to dispose of land approved for conveyance until the land has been surveyed and ownership transferred to the City.

I. Unauthorized Use

DNR has not physically inspected all areas of the selected lands for the presence of unauthorized use but has reviewed department records and is unaware of any existing unauthorized use within the boundaries of Edna Bay's land selections. The City is expected to inspect all land selections to familiarize itself with the condition and quality of the land.

J. Disposition of Leases, Permits, and Applications

Administration of any active leases, permits, and easements for the surface estate issued by the State on land to be conveyed will be transferred to the City when the FFD becomes effective, unless such authorizations are specifically excluded from the conveyance. Any pending applications that have not been adjudicated and issued will be closed.

K. Cultural Resources

The Alaska Office of History and Archaeology (OHA) maintains the Alaska Heritage Resources Survey (AHRs) which is an inventory of all reported historic, prehistoric, and archaeological sites in the State. There are three recorded cultural resources (historic, prehistoric, and archaeological sites, locations, remains, or objects) within the municipal entitlement selections of the City of Edna Bay. All are located within Section 22, Township 68 South, Range 76 East, Copper River Meridian.

It should be noted that only a very small portion of the State has been surveyed for cultural resources and therefore, the possibility remains that previously unidentified cultural resources may be located within the selected lands. While the conveyance of these parcels will have no direct effects to cultural resources, future projects that may be proposed by the City on selected lands could affect unidentified cultural resources. Should any cultural resources be encountered, the City will need to take those actions required by law to protect such resources in accordance with *AS 41.35.070(d) Preservation of Historic, Prehistoric, and Archeological Resources Threatened by Public Construction*.

L. Form and Width Requirement

Each municipal entitlement land selection is required to be compact in form with its length not exceeding approximately four times its width pursuant to *AS 29.65.070(c)*. Review of the City's land selections proposed for conveyance in this decision indicates that the selections are consistent with this statute.

M. Agency Review

The intent of an agency review is to request comments from agencies that may be affected by a municipal entitlement land conveyance decision. Agencies are given the opportunity to evaluate and comment on the municipality's land selection to determine if the State should retain all or a portion of the selected lands, and if so, provide supporting reasons for the requested action. Additionally, agencies are requested to identify any stipulations that may be appropriate if the land is to be conveyed out of state ownership.

Agency review was conducted from December 6, 2016 through January 6, 2017 and from March 15, 2018 through April 1, 2017. Information and comments received from multiple state agencies prior to and during the agency review have been considered and included in the preparation of this preliminary decision. Comments and responses from both agency reviews are included below.

DNR DMLW LCS received brief comments of non-objection from the following agencies:
Mental Health Trust Land Office – Southeast Area; DNR DMLW Realty Services Section; and DNR DMLW Appraisal Section

DNR DMLW LCS Response: LCS appreciates your review of the proposal.

Comments from Alaska Department of Fish & Game (ADF&G)

For parcels along water bodies, ADF&G requests that they be subject to a 50-foot wide public access easement and a 100-foot wide building setback from OHW or MHW mark.

Charley Creek (AWC#103-90-10580) is within one of the selection areas and provides important habitat for chum, coho, and pink salmon. As outlined in the Prince of Wales Island Area Plan, DNR will reserve a 50-foot wide public access easement along the creek, and a 100-foot wide undisturbed buffer, and an additional 200-foot wide management protection zone for maintenance of habitat wildlife.

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ADF&G is concerned about the protection of riparian habitat along Charley Creek. As described in the POWIAP, the creek is important habitat for seasonal black bear concentrations and salmon rearing and schooling. Loss of habitat and destruction of stream banks could have negative impacts on the fish populations over time.

- ADF&G recommends a 200-foot set back and buffer, in addition to the 50-foot wide public access easement, adjacent to the Ordinary High Water Mark of Charley Creek. ADF&G is uncertain if DNR is allowed to impose provisions such as this onto the Deed to the City. If not, ADF&G recommends that the State retain these lands along the creek to ensure public access, wildlife habitat, and fish habitat and water quality along Charley Creek. A good portion of Edna Bay is already developed, and this will ensure future access and protection of these resources.

DNR DMLW LCS Response: DNR concurs with ADF&G's recommendation to protect public access, wildlife habitat, and fish habitat and the maintenance of public access. However, DNR does not have the authority to impose habitat protection buffers in perpetuity on land conveyed out of state ownership. Parcel 1 (Tract J) will remain in state ownership since it is not appropriately classified for conveyance. However, Parcel 3 (Tracts K, L, Lots 3, 5) is appropriately classified and is proposed to be approved for conveyance to the City with a public access easement along Charley Creek, per AS 38.05.127. While the statutory purpose for this easement is public access, it may have the added benefit of protecting important habitat and culturally sensitive areas along Charley Creek.

Comments from DNR, Division of Forestry (DOF)

Parcel 10 (Lot 1 Sec. 34) is entirely within an area designated under an Interagency Land Management Assignment (ILMA) from DMLW to DOF for the management of the Log Transfer Facility that was developed in 2016.

DNR DMLW LCS Response: DNR concurs with the DOF. DNR issued a separate decision under ADL 108253 regarding the disposition of Parcel 10 selected by the City of Edna Bay. The State will retain Parcel 10 due to the third-party interest and unsuitable classification for Municipal Entitlement.

Comments from DNR, DMLW, Resource Assessment and Development Section (RADS)

A plan Amendment to the POWIAP and Land Classification Order No. LCO SE-98-001-A05, dated 1/28/16, changed the Land Classification from Settlement to Forestry on a 35.95-acre parcel described as Government Lot 1 (Parcel 10). This parcel is not eligible for conveyance to the City of Edna Bay.

Additionally, in the Area Data Summary Table, under the heading Setbacks, Reserved Areas, Easements and Conditions, the listed requirements from the area plan apply to DNR land disposals, but not AS 29.65 conveyances. According to AS 29.65.130(6) *Definitions*, state land conveyances to municipalities are made "without reservation or condition except as may be required by law." Reservations required by law include section line easements and 'to and along' easements. Some of the items such as stream setbacks, building setbacks and 200-foot special management zones along waterbodies are not required by law, and therefore cannot be imposed in a municipal entitlement decision.

DNR DMLW LCS Response: DNR concurs with RADS assessment on Parcel 10 (Lot 1). DNR recommends rejecting the parcel selection due to the third-party interest and non-conveyable land classification.

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Per AS 38.05.127, a public access easement on the bed and along Charley Creek extending 50 feet upland from OHWM will be reserved to the State. While the statutory purpose for this easement is public access, it may have the added benefit of protecting important habitat and culturally sensitive areas along Charley Creek.

Comments from DNR Division of Parks and Outdoor Recreation, Office of History and Archaeology (OHA)

OHA indicates that there are three recorded cultural resource sites within the proposed municipal entitlement. Provided the parcels are staked back away a minimum of 100 feet from Charley Creek we do not anticipate adverse effects to those potentially significant cultural resource sites from their transfer to the City of Edna Bay via the municipal entitlement process.

DNR DMLW LCS Response: LCS appreciates OHA's review of this proposed conveyance. However, DNR does not have the authority to impose 100-foot buffers along streams in perpetuity on land conveyed out of state ownership. Per AS 38.05.127, a public access easement on the bed and along Charley Creek extending 50 feet upland from OHWM will be reserved to the State. While the statutory purpose for this easement is public access, it may have the added benefit of protecting important habitat and culturally sensitive areas along Charley Creek.

The following agencies or groups were included in the agency review, but no comment was received:

- Department of Commerce, Community & Economic Development
- Department of Environmental Conservation
- Department of Natural Resources
 - Division of Oil and Gas
 - Division of Parks and Outdoor Recreation
 - Division of Geological and Geophysical Surveys
 - Division of Mining, Land and Water
 - Public Access Assertion and Defense
 - Mining Section – Southeast Region
 - Southeast Regional Office
 - Land Sales Section

VII. Submittal of Public Comments

See Attachment B: Public Notice for specific date and conditions

Pursuant to AS 38.05.945 Notice, DMLW is issuing public notice inviting comment on this Preliminary Decision.

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.

DMLW will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the PD, 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 proposal is approved and no significant change is required, the Preliminary Decision, including any deletions, minor changes, and summary of comments and LCS responses will be issued as a

subsequent Final Finding and Decision 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 DMLW LCS receives timely, written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision. Upon approval and issuance of a Final Finding and Decision, a copy of the decision 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 DNR's Public Information Center. For more information refer to the attached Public Notice.

**DEADLINE TO SUBMIT WRITTEN COMMENT IS
4:30 PM, MONDAY, DECEMBER 14, 2020**

VIII. DISCUSSION AND ALTERNATIVES

A. Discussion

This Preliminary Decision covers 283.403 acres of City of Edna Bay land selections and six additional parcels, consisting of 84.376 acres, that will be added to the City's municipal entitlement selections located within Sub-unit 8a of the POWIAP. The attached map, as part of the decision, depicts the general location of the City's land selections. The total adjudicated in this PD is 367.779 acres.

An area plan amendment and LCO to revise management Sub-unit 8a of the POWIAP were required to convey Parcels 4 – 8 (two parcels were combined into one, Parcel 4, for this decision). The amendment and LCO were signed on November 13, 2019, therefore, the standards for conveyance of state land to the City pursuant to AS 29.65 have been met and the conveyance of these lands is appropriate.

Based on state agency review and thorough evaluation of the selected lands, DNR has determined through this decision that the State has no overriding interests in parcels 2 – 9 and 11 that would preclude them from conveyance. The acreage approved for conveyance under AS 29.65 will be credited towards partial fulfillment of the City's municipal entitlement. Management authority will be transferred once the FFD becomes effective.

DNR proposes to reject Parcel 1 (Tract J ASLS 81-116) consisting of 17.975 acres, from the City's land selections. Parcel 1 has multiple classifications on it, including a Wildlife Habitat Land classification, which is a non-conveyable classification and does not meet the standard for VUU land under AS 29.65. The parcel was incorrectly labeled as VUU land in DNR's Certification of Entitlement for City. Because of the important wildlife values identified on this parcel, it is not appropriate to convey to the City.

DNR also proposes to reject and retain in state ownership Parcel 10 (Lot 1, Sec. 34, T68S, R76E, CRM), consisting of 35.95 acres. This selection is classified as Forestry Land, which is a non-conveyable classification under AS 29.65. Additionally, this parcel has a third-party interest, an Interagency Land Management Agreement (ILMA) with the Division of Forestry, which is essential to its operations. Due to the non-conveyable classification and other interests on this land, the State will retain this parcel.

While Parcels 6 and 7 are appropriate for conveyance, it is important to note that there are bald eagle nests present on these parcels. In accordance with the Endangered Species Act, the Bald Eagle Protection Act of 1940 as amended, and a cooperative management agreement between the U.S. Fish and Wildlife Service and the U.S. Forest Service, facilities that may disturb nesting eagles are prohibited within 330 feet of any bald eagle nest site, whether the nest is currently active or not. Furthermore, activities likely to significantly disturb nesting eagles will be prohibited within 330 feet of active bald eagle nests between March 15 and August 31.

DNR further determines that, for those lands proposed to be conveyed to the City, certain conditions and restrictions are appropriate and necessary to ensure the protection of important resources and public access. This decision therefore imposes restrictions and reservations to be included in the conveyance document, to ensure adherence to pertinent state statutes and administrative code. Restrictions and reservations are listed in Section VIII. Recommendation.

A. Alternatives

The following alternatives exist:

1. Take no action to approve or reject the City of Edna Bay's land selections. This alternative would, in effect, preclude the City's ownership of lands considered to be important to their land base. This action would be inconsistent with the purpose of the Municipal Entitlement Act and inconsistent with the basis for the disapproval of a municipal entitlement selection. Such selections can only be rejected when the State's interests outweigh the interest of the city, and there is no basis for such a determination.
2. Reject the City's selections in their entirety. This alternative would have the same effect as Alternative #1 and would, similarly, be inconsistent with the statutory basis for rejection of a municipal selection.
3. Approve, in part, with management authority transferred and reject, in part, retaining lands in state ownership. This alternative is effective in meeting the intent of the Municipal Entitlement Act to convey appropriately classified state general grant land to the City.

IX. RECOMMENDATION

A. Recommended Alternative

This decision determines that Alternative 3 is the preferred action and best fits the intent of the Municipal Entitlement Act. The City's land selections, in part, are approved for conveyance. The lands that are to be conveyed are subject to the conditions, restrictions, and reservations listed below.

B. Recommended conditions, restrictions, and reservations **Conditions**

1. As provided by 11 AAC 51.035, the State will retain in state ownership the bed of all navigable waters, including any waters determined to be navigable in fact, from the outermost OHWM, including all gravel bars and islands.
2. As required under AS 38.05.127 and 11 AAC 51, the location of the OHWM and MHWM of navigable waters, including any waters determined to be navigable in fact, will be determined at the time of survey to determine the specific area to be retained by the State.

Preliminary Decision

City of Edna Bay - ADL 108519

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3. As required under *AS 38.05.127* and *11 AAC 51*, the location of the OHWM of public waters will be determined at the time of survey.
4. Management authority will transfer to the City on those lands approved for conveyance once the FFD becomes effective.
5. Management authority for public access easements is transferred to the City once the FFD becomes effective. No such easements may be vacated, abandoned or otherwise extinguished or rendered incapable of reasonable use by the public without approval of the State of Alaska, unless an alternative means for reasonable public access is provided and approved by the State.
6. Administration of state leases and permits pertinent to the surface estate will be transferred to the City once the FFD becomes effective. Administration of issued state leases and permits, in the mineral estate will remain with the State.
7. Once the FFD is effective, the City may execute conditional leases and make conditional sales on lands approved for conveyance, prior to issuance of a state patent in accordance with *AS 29.65.070(b)*.
8. The net chargeable acreage approved for conveyance shall be credited towards partial fulfillment of the City's municipal land entitlement pursuant to *AS 29.65.010*.
9. 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.

Restrictions and Reservations

Conveyance document will be issued subject to the following restrictions and reservations:

1. 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 a 50-foot wide easement on each side of all surveyed and unsurveyed section lines in accordance with *AS 19.10.010* and *11 AAC 51.025*.
Reservation of a continuous public access easement, 50 feet wide, upland of and adjacent to the MHWM of marine waters pursuant to *AS 38.05.127* and *11 AAC 51*.
3. Reservation of a continuous public access easement, 50 feet wide, upland of and adjacent to the OHWM of all navigable waters, waters determined to be navigable in fact, and on the bed and 50 feet upland along public waters pursuant to *AS 38.05.127* and *11 AAC 51*.
4. Reservation of the mineral estate pursuant to Section 6(i) of the Alaska Statehood Act and *AS 38.05.125*; and reservation of reasonably necessary access to the mineral estate in accordance with *AS 38.05.130*.

C. Recommended Action on Municipal Selections

This decision recommends conveyance of certain state owned vacant, unappropriated, unreserved general grant land to the City of Edna Bay, and rejects a portion of lands selected, all located in the Copper River Meridian of Southeast Alaska.

Lands Proposed for Conveyance

TABLE 4 below lists those lands proposed to be approved for conveyance in this decision. The estimated acreages for conveyance do not account for any exclusions, and exact acreages are determined by survey. The final acreage amount will be credited towards partial fulfillment of the City of Edna Bay's municipal land entitlement. DNR amended the selections to include Parcels 4 - 8 after consultation with the City, to bring the acreage of this conveyance closer to the city's overall entitlement.

TABLE 4

Parcel	CRM, T68S, R76E, Section and Legal Description	Acres
2	Sec. 22: Tract I ASLS 81-116	2.790
3	Sec. 22: Tract K (31.331 ac) and Tract L (0.657 ac) ASLS 81-116, Gov. Lot 3 (38.99 ac), Lot 4 (10.99 ac), Lot 5 (15.9 ac)	97.868
4	Sec. 23: Tract Q ASLS 81-116 (10.295 ac), remainder Gov. Lot 1 of NW1/4NW1/4 and E1/2NW1/4 ASLS 2012-68 (19.79 ac)	30.085
5	Sec. 22: Tract H ASLS 81-116	8.494
6	Sec. 27, 28: Tract G ASLS 81-116	7.080
7	Sec. 28: Tract D ASLS 81-116	6.057
8	Sec. 28: Gov. Lots 11 (3.76 ac), 12 (8.9 ac), SW1/4SE1/4NW1/4 (10 ac), NW1/4SE1/4NW1/4 (10 ac)	32.66
9	Sec. 33: Gov. Lot 5 (7.91 ac), SE1/4NE1/4 (40 ac)	47.91
11	Sec. 34: Gov. Lot 2 (29.77 ac), Lot 3 (11.14 ac), NE1/4SW1/4 (40 ac)	80.91
Approximate Total Proposed Approved Acres:		313.854

Lands Proposed for Rejection

TABLE 5 below lists those lands that were selected by the City that are proposed for rejection in this decision. These include lands to be retained by the State because the interest of the State outweighs that of the City, or where the classification was inappropriate for conveyance and not VUU land.

TABLE 5

Parcel	CRM, T68S, R76E, Section and Legal Description	Acres
1	Sec. 22: Tract J ASLS 81-116	17.975
10	Sec. 34: Gov. Lot 1	35.95
Approximate Total Proposed Rejected Acres:		53.925

IX. RECOMMENDATION AND PRELIMINARY DECISION

The following are the findings for this Preliminary Decision:

1. That it is appropriate to convey 313.854 acres of state-owned land to the City of Edna Bay. DNR has determined that the State's interest in retaining this land does not outweigh the City's interest in obtaining it.
2. That it is appropriate to reject 53.925 acres of city land selections where the interest of the State in retaining the land outweighs the City's interest in obtaining it.

This Preliminary Decision described above, as represented in the preferred alternative, has been reviewed and considered, and it is DNR's recommended action that it is in the best interest of the State and that it is hereby approved to proceed to Public Notice in accordance with AS 38.05.945.

After public notice, the subsequent public review process may result in changes to the preferred alternative or disapproval of the proposed action altogether. A Final Finding and Decision will address any significant issues or concerns raised during the public review process.



Prepared by: Mary Hermon
Natural Resource Specialist II
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

Date:

11/9/2020

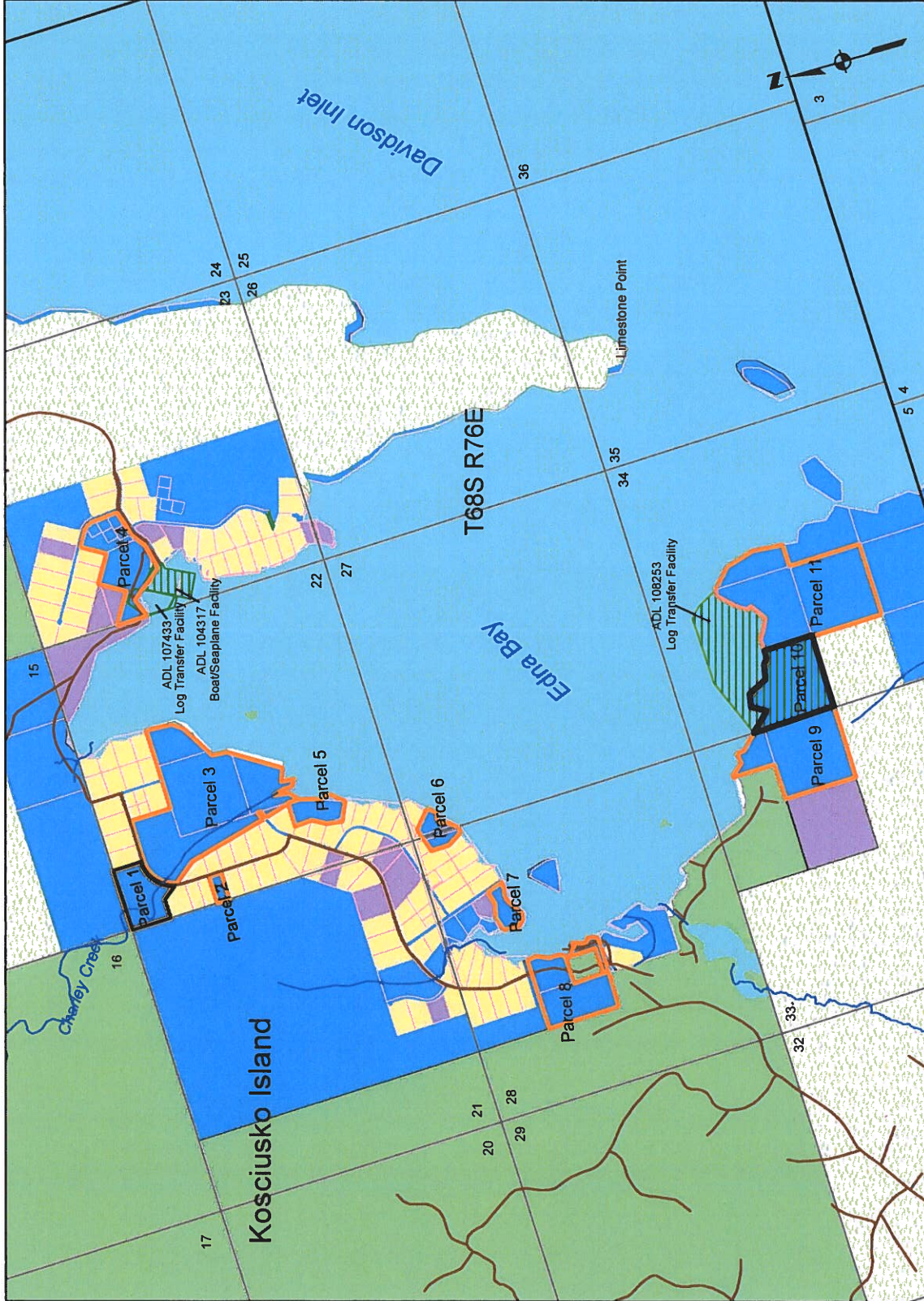
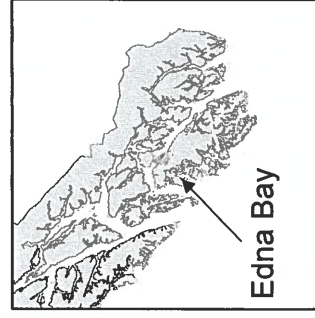
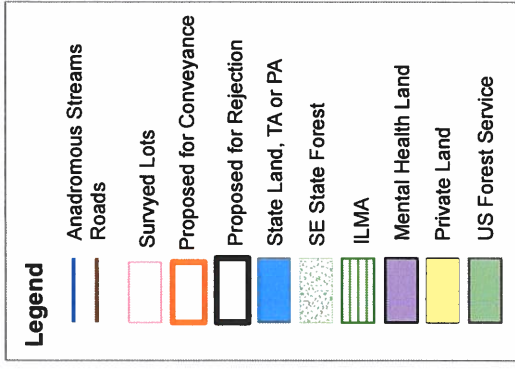


Approved by: Rachel Longacre
Section Chief
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

11.09.2020

Date:

Attachment A
City of Edna Bay
Municipal Entitlement
Preliminary Decision
ADL 108519



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.



Created by: SOA-DNR-DMLW-LCS

July 15, 2020

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

Attachment B: PUBLIC NOTICE under AS 38.05.945
CONVEYANCE OF STATE LAND UNDER AS 29.65

City of Enda Bay
Municipal Land Entitlement Selections
Alaska Division of Lands (ADL) 108519

COMMENT PERIOD ENDS: 4:30 PM, TUESDAY, DECEMBER 15, 2020

The Department of Natural Resource (DNR) has prepared a Preliminary Decision (PD) for a proposal to convey approximately 314 acres of state owned vacant, unappropriated, unreserved (VUU) general grant land to the City of Edna Bay, in order to partially fulfill their municipal land entitlement under AS 29.65.030. These land selections are within Unit 8 of the Prince of Wales Island Area Plan (PWIAP). DNR finds that the proposed conveyance is consistent with the requirements of AS 29.65, and that the City's interest in obtaining these state lands outweigh the State's interest in retaining them.

DNR proposes to reject approximately 54 acres of city selections. DNR has determined that the State's interest for retaining the land outweigh the City's interest in obtaining the land, or where the land classification was inappropriate for conveyance.

Pursuant to AS 38.05.945 Notice, the public is invited to comment this PD proposing to transfer ownership of state land to the City of Edna Bay. Comments must be received in writing to the Division of Mining, Land and Water, Attention: Mary Hermon, at 550 West 7th Avenue, Suite 640, Anchorage, Alaska 99501, by fax at (907) 269-8916, or by email at mary.hermon@alaska.gov. If you have questions, call Mary Hermon at (907) 269-6546.

The public notice is available on the Alaska Online Public Notice System at: <http://dnr.alaska.gov/commis/pic/pubnotfrm.htm>. The Preliminary Decision is available on the DMLW Municipal Entitlement web site at: <http://dnr.alaska.gov/mlw/muni/> and on the DMLW Land Sales website at: <http://landsales.alaska.gov>.

You may request a copy of the PD and associated maps from the DNR, DMLW, LCS, Municipal Entitlements and any comments submitted must be in writing and sent to the above address, electronic mail or fax and must be received **on or before 4:30 PM, Tuesday, December 15, 2020**, in order to ensure consideration.

Following the comment deadline, those written responses received will be considered and the decision may be modified to incorporate public comments in a Final Finding and Decision (FFD). Only persons who comment during this public comment period will be eligible to file an administrative appeal of the FFD. A copy of the FFD will be sent to any person who comments on the PD. The FFD will include the appeal instructions. Please direct all inquiries or questions to Mary Hermon, at the above address, electronic mail, phone or by fax.

DNR is prepared to accommodate individuals with disabilities by providing auxiliary aids or services when requested. Individuals with audio impairments who wish to respond to this decision by telephone may call the DNR, Public Information Center in Anchorage between the hours of operation: 10:00 AM to 5:00 PM, Monday through Friday at TTY: 711 for Alaska relay or 800-770-8973 or go to <http://dnr.alaska.gov/commis/pic/>