

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

**PRELIMINARY DECISION**  
**ADL 109052**

**Proposed Tideland Conveyance**  
*AS 38.05.035(e), AS 38.05.825*

**RELATED ACTIONS:**

**Proposed Amendment to the Juneau State Land Plan - AS 38.04.065**  
**Proposed Land Classification Order – AS 38.05.065 and AS 38.05.300**

**PUBLIC COMMENT PERIOD ENDS 5:00 PM, THURSDAY, FEBRUARY 18, 2021**

**I. Proposed Actions**

*Preliminary Decision: Proposed Tideland Conveyance to a Municipality ADL 109052*

*Attachment A: Vicinity Map*

*Attachment B: Public Notice*

*Public is invited to comment on the proposed related actions:*

*Draft Land Classification Order CL SE-93-004A10*

*Draft Amendment to the Juneau State Land Plan SE-93-004A10*

Primary Proposed Action: The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS), proposes to convey one parcel of State-owned tide and submerged land to the City and Borough of Juneau (CBJ), pursuant to Alaska Statute (AS) 38.05.825 *Conveyance of Tide and Submerged Land to Municipalities*. The parcel is located within Gastineau Channel in the downtown Juneau harbor and is approximately 4.73 acres in size, final acreage will be determined by completing survey requirements. See *Attachment A: Vicinity Map* for a depiction of the project area.

This decision determines whether the tide and submerged land selection by the City and Borough of Juneau meets the requirements for conveyance in accordance with AS 38.05.825 *Conveyance of Tide and Submerged Land to Municipalities*, the Submerged Lands Act of 1953, and the Equal Footing Doctrine.

Proposed Related Actions: The Preliminary Decision is dependent upon adoption of the Amendment to the Juneau State Land Plan and the Land Classification Order. Drafts of these documents accompany this Preliminary Decision for public review.

*Area Plan Amendment:* DNR proposes to amend the Juneau State Land Plan (JSLP adopted 1993). The amendment 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 and the current description of the management intent. The JSLP will be amended to add the designation of Waterfront development (Wd) and add the classification of Waterfront development land to Subunit

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6a8. Refer to **Section IX. Planning and Classification** of this document for more information on this proposed related action.

*Land Classification Order:* In relation to the Area Plan Amendment, DNR proposes to reclassify the project area in a Land Classification Order that adds Waterfront Development Land to the Wildlife Habitat Land classification. Refer to **Section IX. Planning and Classification** of this document for more information on this proposed related action.

These related actions will be developed separately. However, approval of the proposed actions is dependent upon one another in that one action will not proceed without approval of all actions.

Public Notice of Proposal: In accordance with *AS 38.05.945 Notice*, during a period of at least 30 consecutive days, the public will have the opportunity to submit written comment on this proposal. Public notice for all actions is being conducted concurrently and will include the PD for tideland conveyance (ADL 109052), draft Area Plan Amendment No. SE-93-004A10, and draft Land Classification Order CL SE-93-004A10.

See **Section XV. 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, LCS moves forward with the proposal, a Final Finding and Decision will be issued.

## II. Authority

DNR has the authority under *AS 38.05.825* to convey State-owned tide and submerged lands 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*. Article VIII, Section 1, of the Constitution of the State of Alaska states "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

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 and Title 11, Sections 55.010-030* of the Alaska Administrative Code (AAC) allow for amendments to area plans and land classifications.

## III. Administrative Record

Tideland conveyance ADL 109052 case file constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Juneau State Land Plan for State Lands (JSLP, adopted 1993) and associated land classification files;
- *Alaska Department of Fish and Game Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes*;
- *City and Borough of Juneau Comprehensive Plan (adopted 2013)*;
- *City and Borough of Juneau Long-Range Waterfront Plan (adopted 2004)*; and
- DNR case files: Public easement ADL 106916, tideland sale ADL 18550, tideland lease application ADL 108324, and tideland conveyance ADL 106678;

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### **IV. Scope of the Proposal**

The scope of this proposal, under the statutes described in the preceding **Section II. Authority**, is limited and specific to the determination of whether it is in the State's best interest to convey the subject parcel to the City and Borough of Juneau under AS 38.05.825. It additionally includes identification of any third-party interests, other interests of record, and stipulations necessary to ensure that statutory requirements have been met. This decision does not consider any future development, or the effects of such development, that may occur after the transfer.

The proposed related actions will be issued concurrently with the Final Finding and Decision. This action is described in more detail in **Section IX. Planning and Classification**.

### **V. Location**

Located within DNR's Southeast Region, the parcel is located on tide and submerged lands within Gastineau Channel, adjacent to Alaska Tideland Surveys (ATS) No. 3, ATS No. 201, ATS No. 1623, and ATS No. 1707 within the City and Borough of Juneau. It is located within Section 25, Township 41 South, Range 67 East, Copper River Meridian.

*USGS Map Coverage:* Juneau B-2

*Municipality:* City and Borough of Juneau

*Regional Corporation:* Sealaska Corporation

*Federally Recognized Tribe:* Central Council of the Tlingit and Haida Indian Tribes of Alaska, Douglas Indian Association

*Village Corporation:* Goldbelt Incorporated

### **VI. Legal Description**

The unsurveyed tideland parcel within the NW1/4 NW1/4 of Section 25, Township 41 South, Range 67 East, Copper River Meridian, within Gastineau Channel, City and Borough of Juneau, Alaska northwest of tidelands previously surveyed as ATS 201 and ATS 1623, and southeast of tidelands previously surveyed as ATS 1707, containing 4.73 acres, more or less. Final acreage will be determined prior to disposal by the required ATS.

Legal Description of the Amendment to the Juneau State Land Plan: Tide and submerged lands within Gastineau Channel containing approximately 542 acres located south and east of downtown Juneau 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).

### **VII. Title**

Information from Title Report No. 20864, current as of April 28, 2020, indicates the State of Alaska received title to the affected tide and submerged lands under the Alaska Statehood Act, Public Law 85-508, the Submerged Lands Act, Public Law 31 and under the Doctrine of Equal Footing upon entry of the State into the Union. Management is subject to the Public Trust Doctrine.

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

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

*Navigable Waters:* Gastineau Channel is a navigable body of water. Per *AS 38.05.126(b) Navigable and Public Waters*, "...the State has full power and control of all of the navigable or public water of the state, both meandered and unmeandered, and the State holds and controls all navigable or public water in trust for the use of the people of the state." This trust is in accordance with the principles of the Public Trust Doctrine, which are included in Article VIII, Section 14 of the Constitution of the State of Alaska and protected in the United States Constitution. It is vested in the title to this land, is not transferable, and the State's title to submerged lands under navigable waters cannot be relinquished by a transfer of the property. In holding with this concept, navigability determinations are made and access will be reserved per *AS 38.05.127 Access To and Along Public and Navigable Water*. For more information, see **Section XI. Access, Including Access To and Along Public or Navigable Water** subsection of this document.

### *Other Conflicts or Pending Interest:*

*ADL 18550:* Conveyed tidelands to A J Industries Inc. surrounding the landward side of the requested area.

*ADL 106916:* Public Easement for a 10-foot submerged wastewater line that crosses through the requested area. This Utility Easement is granted to CBJ.

## **VIII. Background and Discussion**

On December 18, 2019, CBJ submitted an application for conveyance of a 10.2-acre tide and submerged parcel in Gastineau Channel, south of downtown Juneau. The parcel is located adjacent to Alaska Tideland Surveys (ATS) No. 3, ATS No. 201, ATS No. 1623, ATS No. 1635, and ATS No. 1707 within the City and Borough of Juneau. It is located within Sections 25 and 26, Township 41 South, Range 67 East, Copper River Meridian.

CBJ applied for a tideland conveyance of the parcel in order to extend the Seawalk, a public walkway along the downtown waterfront area. The Seawalk project is approved by the 2004 CBJ Long Range Waterfront Plan. The request also includes submerged lands for a mooring dolphin catwalk allowing additional cruise ship moorage area. This parcel is adjacent to submerged lands conveyed to CBJ under ADL 108124 for the purpose of cruise ship moorage. City resolution No. 2878 supporting CBJ's application to acquire tide and submerged land from DNR and extend the Seawalk was adopted on February 24, 2020.

CBJ has previously requested use of this area. In 2014, CBJ submitted a Public and Charitable lease application under *AS 38.05.810 Public and Charitable Use*, requesting approximately 2.9 acres of tide and submerged lands for commercial cruise ship mooring located between ADL 108124 and ADL 106678. This application was serialized as ADL 108324, but a lease was not issued. The application was closed on April 17, 2020 after receipt of the ADL 109052 application for tideland conveyance under *AS 38.05.825* that encompasses the same area.

LCS is proposing to convey a parcel that is approximately 4.73 acres. The proposed parcel encompasses the area required for commercial cruise ship moorage along with the proposed

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mooring dolphin catwalk and Seawalk extension public development projects that were referenced in the application. The proposed parcel is within Gastineau Channel northwest of ATS 201 and ATS 1623, and southeast of tidelands previously surveyed as ATS 1707. The majority of the construction of the Seawalk extension will occur outside of the proposed parcel and on filled tidelands within ATS 201 owned by Franklin Dock Enterprises, LLC.

A three-acre portion of the proposed parcel contains an existing commercial day use for commercial cruise ship moorage on State-owned submerged lands. This moorage is likely to continue and is associated with the adjacent cruise ship dock and mooring dolphins that are located on conveyed tidelands.

Tourism is the predominant industry along the Juneau waterfront during the April through September cruise ship season. While moored in port, cruise ships frequently idle engines to continue running onboard amenities. The opacity of exhaust from idling ships is monitored by the Alaska Department of Environmental Conservation (DEC), Division of Air Quality, Cruise Ship Monitoring Program, and not the landowner. The program has reported an increase in concern and complaints of odor and visible smoke in recent years, and this application for conveyance has raised concern about increased cruise ship exhaust in the downtown Juneau area. The proposed mooring dolphin catwalk will provide a modified dock for a larger class of cruise ship but will not increase the number of cruise ships that can dock in Juneau. The Cruise Ship Monitoring Program will continue to issue violation notices and fines for violations of the State's air quality standard for cruise ships.

AS 38.05.825(a) requires DNR to convey to the municipality tide and submerged 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. The municipality must apply for conveyance, the tide and submerged lands must be within the boundaries of the municipality, the use cannot unreasonably interfere with navigation or public access, the land may not be subject to a shore fisheries lease under AS 38.05.082 *Leases For Shore Fisheries Development*, the land classification must be consistent with or compatible with the proposed use, and the land must be required for a public or private development approved by the municipality. CBJ has met the application requirements of the statute through the following:

- Public Interest- The public interest in retaining the lands within the proposed parcel in State ownership does not outweigh the municipal interest in managing these submerged lands. CBJ plans to develop facilities that will be used by the public. LCS believes that there are no other overriding State interests in the proposed parcel for conveyance; the municipal interest clearly rises above the public interest in retaining these lands in State ownership.
- Location- The land is within the boundary of the municipality.
- Navigation- The proposed use would not unreasonably interfere with navigation.
- Public Access- The proposed use would not unreasonably interfere with public access.
- Application- The municipality has submitted an application for conveyance.
- Shore Fisheries Leasing- The land is not subject to shore fisheries lease.
- Land Classification- The land classification will be consistent with the proposed action upon approval of the Juneau State Land Plan area plan amendment.
- Municipal Approval of Development- The Assembly supports the proposed development for this tideland conveyance through City and Borough of Juneau Resolution No. 2878.

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### IX. Planning and Classification

1. *Planning*: The subject parcel is located within the Juneau State Land Plan (JSLP, adopted 1993), Region 6 – Juneau, Unit 6a, Subunit 6a8. The plan designates the subject parcel as Fish and Wildlife Harvest (Hv) and Fish and Wildlife Habitat (Hb). These designations convert to a classification of Wildlife Habitat Land.

AS 38.05.825(a)(5) requires that land to be conveyed must be either “classified for waterfront development or for another use that is consistent or compatible with the use proposed by the municipality, or the proposed use of the land is consistent or compatible with a land use plan adopted by the municipality or the department.” 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 parcel selected by CBJ is not classified within the JSLP as waterfront development or another use that is consistent or compatible with CBJ’s development plan.

Area Plan Amendment: In order to comply with the statute, concurrent with this decision, DNR is proposing to add the designation of Waterfront development (Wd) to the JSLP. An amendment to the JSLP is necessary to change the designation of subunit 6a8. The plan amendment will add Waterfront development (Wd) to the existing designations of Wildlife Habitat (Hb) and Fish and Wildlife Harvest (Hv). This amendment only affects subunit 6a8. No management intent changes are required, as the proposed activities are allowed according to the existing management intent. Multiple use, factors affecting the area, resource inventory, present and potential land uses, and compatible classifications have been considered. These factors are listed in AS 38.04.065(b) *Land Use Planning and Classification*. The plan amendment will receive public notice. If LCS approves the tideland conveyance, the plan amendment will accompany the Final Finding and Decision. The approval of an area plan amendment is a separate action. However, approval of the conveyance is dependent upon approval of the area plan amendment.

The JSLP “Management Intent” section discusses Subunit 6a8 and the submerged lands adjacent to the Juneau waterfront, and specifically envisions commercial development including development related to cruise ship activity. The JSLP states that the plan’s intent related to 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.

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The management intent specified within the JSLP is consistent with the current and future maritime activities along the Juneau waterfront. Tourism is the predominant industry along the Juneau waterfront from April through September. The addition of the designation of Waterfront development more accurately reflects the ongoing and significant maritime commercial activities of the Juneau waterfront associated with tourism.

LCS finds that the classification of Waterfront development land as set forth in the plan amendment and LCO, will fulfill the requirement of AS 38.05.825(a)(5). Retaining the Habitat and Harvest designations and Wildlife habitat land classification in the JSLP is also appropriate and reflects the fish and wildlife populations existing and available for harvest along the Juneau waterfront during all seasons.

2. *Land Use Classification:* The State classified the subject parcel as Wildlife Habitat Land under Classification Order CL SE-93-004 based on the (JSLP, adopted 1993).

Land Classification Order: If approved by the Commissioner, the current land classification order will be amended to reclassify the subject parcel from Wildlife Habitat Land to Waterfront development land. This action affects the entirety of subunit 6a8. If LCS approves the tideland conveyance, the land classification order will accompany the Final Finding and Decision. The approval of the land classification order is a separate action, occurring concurrent with the Final Finding and Decision.

3. *Local Planning:* CBJ has a Comprehensive Plan (adopted 2013) and a Long-Range Waterfront Plan (adopted 2004). The proposed parcel is adjacent to the Waterfront Industrial zone of the Long-Range Waterfront Plan. Cruise ship related docks are the primary marine facilities featured along the waterfront. Both plans mention development of the downtown waterfront as a priority. Construction and extension of the Seawalk is included as a priority in both plans due to its ability to create a desirable recreation corridor for residents and visitors. Preserving public access to the shoreline and waterfront areas through water-dependent and water-related uses such as the Seawalk is also listed as a priority. The Comprehensive Plan includes extending the Seawalk as an improvement to facilitate pedestrian usage of downtown while reducing congestion of South Franklin Street.

The amendment to the JSLP to add the Waterfront development land classification is consistent with the local planning documents.

## **X. Traditional Use Findings**

The subject parcel is located within the City and Borough of Juneau and a traditional use finding is therefore not required per AS 38.05.830 *Land Disposal in the Unorganized Borough*. However, information on current or traditional uses is welcomed and can be given during the public comment period. See **Section XV. Submittal of Public Comments** at the end of this document and *Attachment B: Public Notice* for details on how to submit comment.

## **XI. Access, Including Access To and Along Public or Navigable Water**

The parcel is accessible by a navigable body of water via boat or float plane. The parcel is adjacent to privately-owned tidelands. Pursuant to AS 38.05.825, the conveyance of tidelands cannot unreasonably interfere with public access and the municipality must provide reasonable access to public waters and tidelands.

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*Access To and Along Public or Navigable Waters:* In accordance with AS 38.05.127 *Access To Navigable or Public Water*, DNR will determine if a water body is navigable or public and establish easements or rights-of-way as necessary to ensure unobstructed access to and along the body of water. Regulations dictating the creation of easements or rights-of-way under this statute include 11 AAC 51.035 *Determination of Navigable and Public Water*, 11 AAC 51.045 *Easements To and Along Navigable and Public Water*, and 11 AAC 53.450, *Buffer Strips, Reserved Areas, and Public Easements*.

### *Easements and Setbacks:*

- that portion of 10-foot public utility easement ADL 106916 located within ADL 109052 shall be dedicated in the platting action; and
- a 50-foot continuous public access easement seaward and landward from the current MHW of public or navigable water bodies shall be reserved to the State in accordance with AS 38.05.127 *Access To Navigable or Public Water*;

Where appropriate, reservations and restrictions will be depicted on the plat and described in plat notes.

## **XII. Hazardous Materials and Potential Contaminants**

There is no known contamination of, or hazardous materials on, the subject parcel. However, according to the Alaska Department of Environmental Conservation's contaminated sites database, several sites located nearby are characterized as having been previously contaminated. The database reports that cleanup is complete at all identified sites.

The applicant is expected to inspect the subject parcel to ascertain the quality and condition of the land. The State makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land proposed for conveyance to the applicant. The State does not assume any liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances ever be identified.

## **XIII. Survey**

Upon DNR approval for conveyance of the parcel, an Alaska Tideland Survey (ATS) performed by an Alaska Registered Land Surveyor under direction of the DMLW Survey Section will be required at the expense of the applicant for parcels that are not adequately surveyed and platted for conveyance. This parcel will require a survey prior to issuance of a state tideland patent, and the applicant will be responsible for the expense of any survey and plat recordation. There is no requirement under state statutes to appraise the land prior to conveyance.

## **XIV. DMLW and Agency Review**

Information and comments received from multiple sections within DMLW prior to and during agency review have been considered and included in the preparation of this PD. The conveyance application documents were distributed to State agencies for review from October 7, 2020 through October 28, 2020. The intent of an agency review is to request comments from agencies that may be affected by a 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.



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DNR DMLW LCS received brief comments of non-objection from the following agencies:

DNR Division of Agriculture, DNR Division of Oil and Gas, Alaska Department of Fish and Game, and the Department of Transportation & Public Facilities.

*DNR DMLW LCS response:* LCS appreciates your review of the application materials.

DEC comment: The applicant responded “unknown” to the question regarding any known previous site contamination on the Environmental Risk Questionnaire. DEC advised that according to their department’s Contaminated Sites database, a number of sites located near the selected parcel are characterized as having been previously contaminated but are now closed projects. DEC advised that the answer to this question should be revised to state that nearby areas had been previously contaminated and if this conveyance is approved, the contractors should be alerted that special attention may be required. Lastly, DEC stated that parts of Gastineau Channel have been filled with mine tailings, so if the City wanted to dredge the area for a cruise ship dock, the sediment might require special handling and/or disposal.

*DNR DMLW LCS response:* LCS appreciates your review of the application materials. The applicant has been advised, and has submitted a revised Environmental Risk Questionnaire reporting that nearby areas have been previously contaminated and if the conveyance is approved, contractors will be alerted to focus special attention on potential contamination. The Preliminary Decision will cover the topic of contamination in the *Hazardous Material and Potential Contamination* section.

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

- Alaska Conservation District;
- Department of Natural Resources;
  - Division of Geologic and Geophysical Surveys;
  - Division of Parks and Recreation;
  - State Historic Preservation Office; and
- Mental Health Trust Land Office.

## **XV. Submittal of Public Comments**

**See Attachment B: Public Notice for specific dates and conditions.**

Pursuant to *AS 38.05.945 Notice*, LCS is issuing public notice inviting comment on this Preliminary Decision and the proposed related actions.

In accordance with *AS 38.05.946(a) Hearings*, a municipality or corporation entitled to receive notice under *AS 38.05.945(c)* may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the Commissioner (or representative) shall attend the hearing. The Commissioner has discretion whether or not to hold a public hearing.

LCS will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the Preliminary Decision or proposed related actions, additional public notice for the affected lands will be given. Reducing the amount of land offered

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and 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 related actions, including any deletions, minor changes, and summary of comments and LCS responses will be issued as a subsequent Final Finding and Decision, JSLP Amendment No SE-93-004A10, and Land Classification Order CL SE-93-004A10 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 LCS receives timely, written comment during the identified comment period will be eligible to file an appeal OR request for reconsideration of the Final Finding and Decision, JSLP Amendment No SE-93-004A10, or Land Classification Order CL SE-93-004A10. Upon approval and issuance of a Final Finding and Decision OR these actions, a copy of the decision, order, and amendment will be made available online at <http://landsales.alaska.gov/> and sent with an explanation of the appeal OR 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 DNR's Public Information Center. For more information refer to the attached Public Notice.

### **DEADLINE TO SUBMIT WRITTEN COMMENT IS 5:00 PM, THURSDAY, FEBRUARY 18, 2021**

#### **XVI. Stipulations**

If approved for conveyance, applicable conditions, restrictions and reservations will be imposed upon transfer of equitable title when the Final Finding and Decision is effective and on the final conveyance document, including but not limited to the following:

1. That portion of 10-foot public utility easement ADL 106916 located within ADL 109052 shall be dedicated in the platting action.
2. Administration of state leases and permits in the surface estate, if any, will be transferred to CBJ 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.
3. Management authority for the approved tidelands will be transferred to CBJ when the FFD is effective. When approved, CBJ may execute leases and permits prior to issuance of a state conveyance document in accordance with AS 38.05.825.
4. All mineral related permits, licenses, claims and leases affecting the tideland proposed for conveyance, if any, will remain under the authority of the State.
5. CBJ 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.

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6. 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.
7. A notice to proceed to survey will be issued if no appeals are received, or when appeals are resolved, after issuance of a Final Finding. The applicant must hire a surveyor and the surveyor must apply to DMLW's Survey Section for Survey Instructions. The applicant's survey must be approved by DMLW and the local platting jurisdiction, if any, as set forth in the Survey Instructions. Survey costs shall be borne by the municipality.
8. The approved tideland conveyance is subject to valid existing rights, all required easements and the following conditions: 1) Grantee may lease the land, but may not sell it; 2) Title to the land conveyed under this authority reverts to the State upon dissolution of the municipality; 3) Grantee takes title to the tide and submerged lands subject to the Public Trust Doctrine that may be enforced by the State in a court of competent jurisdiction; 4) The municipality shall be required to ensure that reasonable access to public waters and tidelands is provided; 5) The municipality may not lease land conveyed under this section for shore fisheries, but after conveyance, the land may be leased by the State for shore fisheries under AS 38.05.082 if the Commissioner determines that the lease is compatible with the municipality's use of the land.
9. Pursuant to AS 38.05.127 *Access To Navigable or Public Water*, a 50-foot continuous public access easement seaward and landward from the current MHW of public or navigable water bodies shall be reserved to the State.
10. Pursuant to AS 38.05.125 the mineral estate shall not be conveyed.

## **XVII. Discussion and Alternatives**

The following alternatives were considered:

### Alternative 1: Convey proposed parcel

Approve the proposed conveyance of the reduced 4.73-acre tide and submerged land parcel to CBJ with management authority to be transferred when the Final Finding and Decision becomes effective. The proposed parcel encompasses the area required for the mooring dolphin catwalk and Seawalk extension public development projects that were referenced in the application. This alternative meets the intent of AS 38.05.825 to convey tide and submerged land to municipalities where the municipality's interest in obtaining the tideland outweighs the public interest in retaining State ownership.

### Alternative 2: Convey requested parcel

Approve the conveyance of the requested 10.2-acre tide and submerged land parcel to CBJ. This alternative would have the same effect as Alternative #1 but would convey additional tide and submerged land to CBJ where the municipality's interest in obtaining the tideland parcel may not outweigh the public interest in retaining State ownership.

### Alternative 3: Retain

LCS will reject and retain the tide and submerged land selection by CBJ. This alternative would, in effect, preclude CBJ's ownership of the tideland considered to be important for their community development and access. This action would be inconsistent with the purpose of

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AS 38.05.825 and inconsistent with the basis for the disapproval of a tideland selection in that section of statute. A tideland selection can only be rejected when the State's interest outweighs that of the municipality, and there is no basis for such a determination.

For the aforementioned reasons, Alternative 1 is the preferred alternative.

Recommendation follows.

**Preliminary Decision**

AS 38.05.825 Tideland Conveyance – ADL 109052

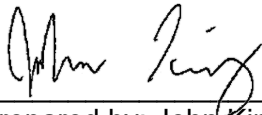
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**XVIII. Recommendation and Preliminary Decision**

This Preliminary Decision for the proposed disposal of State lands, JSLP Amendment No SE-93-004A10 and Land Classification Order CL SE-93-004A10 described throughout this document and its attachments are consistent with the overall management intent for State-owned land. Alternative 1 is the preferred alternative. Under AS 38.05.825, no direct economic benefit is realized by the State, but further development of this parcel will serve the needs of the community of Juneau. Facilitating community development activities in Juneau indirectly provides economic benefit to the State by encouraging settlement and related economic activity. LCS believes that the proposed conveyance complies with the requirements of AS 38.05.825, as discussed above. Unless public comment indicates that the parcel does not qualify for conveyance under AS 38.05.825, or that the public interest in retaining the parcel clearly outweighs the municipality's interest in retaining the parcel, DNR must convey the parcel subject to completion of an ATS.

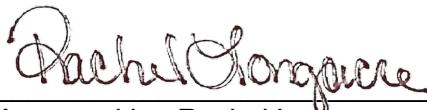
The Preliminary Decision described above, as represented by the preferred alternative, has been reviewed and considered. I find that the recommended action may be in the best interest of the State and that it is hereby approved to proceed to public notice.

This is a Preliminary Decision, and analysis of subsequent public review may result in changes to the preferred alternative of the proposed disposal of State lands, JSLP Amendment No SE-93-004A10 and Land Classification Order CL SE-93-004A10. If the decision is approved, JSLP Amendment No SE-93-004A10 and Land Classification Order CL SE-93-004A10 will accompany and precede any Final Finding and Decision issued.



Prepared by: John King  
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Division of Mining, Land and Water  
Department of Natural Resources  
State of Alaska

January 15, 2021  
Date of Signature



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

January 15, 2021  
Date of Signature