

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

FINAL FINDING AND DECISION
CONVEYANCE OF STATE LAND UNDER AS 29.65

CITY OF EDNA BAY
MUNICIPAL LAND ENTITLEMENT SELECTIONS
ADL 108519

I. SUPPLEMENT STATEMENT

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) issued on November 9, 2020 for the proposed action, which is incorporated herein, except as modified or clarified by this FFD. The map attached to this FFD depicts the selection that is the focus of this decision.

II. RECOMMENDED ACTION

The State of Alaska, Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) has determined in this FFD that Alternative 3 described in the PD is the preferred action since it best fits the intent and requirements of the Municipal Entitlement Act. This decision covers approximately 373.459 acres, approving approximately 313.854 acres for conveyance and transfer of management authority and rejecting conveyance of approximately 53.925 acres.

There is one change between the PD and the FFD. The State will postpone adjudication on approximately 5.68 selected acres that are Alaska National Interest Lands Conservation Act (ANILCA¹) topfiled² and not in state ownership.

III. AUTHORITY

The authority for conveyance of state land is pursuant to *AS 29.65 General Land Grant* and the authority for the Final Finding and Decision is pursuant to *AS 38.05.035(e) Power and Duties of the Director*.

IV. PUBLIC PARTICIPATION AND INPUT

Pursuant to *AS 38.05.945 Notice*, a public notice announcing the Preliminary Decision for the proposed conveyance of municipal entitlement selections along with the solicitation for public comment was published and distributed in the following manner:

- Posted under State of Alaska Online Public Notice from November 9 to December 15, 2020.
- Posted on the DNR Land Sales website from November 9 to December 15, 2020.
- Posted on the DNR Municipal Entitlement website from November 9 to December 15, 2020.

¹ ANILCA- Alaska National Interest Lands Conservation Act (Public Law 96-487, 12/2/1980, 90 Stat 2371)

² ANILCA Topfiling - Subject to valid existing rights and Native selection rights under ANCSA, the State of Alaska may submit selection applications pursuant to 906(e) of ANILCA for lands which are not available on the date of filing the original selection application. A selection under section 906(e) attaches when the land becomes available for selection.

- Mailed with a request to post for 30 days, to the Coffman Cove, Craig, Edna Bay, Hydaburg, Kasaan, Klawock, Point Baker, Thorne Bay, Whale Pass, and Wrangell postmasters per AS 38.05.945(c)(4).
- Mailed to the regional corporation and local tribes per AS 38.05.945(c)(2)-(3).
- Mailed and/or emailed to the City of Edna Bay.

The public notice state that written comments must be received by 4:30 PM, Tuesday, December 15, 2020 in order to ensure consideration and eligibility to appeal. For more information, refer to the attached PD.

V. RESPONSE TO COMMENTS

DNR DMLW LCS received seven written comments during the public comment period. All comments are summarized and addressed below.

DNR DMLW LCS received brief comments of non-objection from the following agencies:
DNR DMLW Statewide Abatement of Impaired Land, Mental Health Trust Land Office – Southeast Area, and DNR Division of Outdoor Parks and Recreation.

Comments from Department of Environmental Conservation (DEC):

The Contaminated Site Database and web map should be reviewed to identify if contaminated sites are within the proposed area. These resources can be accessed off the Contaminated Sites Program website at <https://dec.alaska.gov/spar/csp/>.

DNR DMLW LCS response: Thank you for your review of the PD. A review of DEC's Contaminated Site Map indicated that there are no contaminated sites, past or active, within the Edna Bay city boundaries or selections.

Comments from Department of Transportation & Public Facilities (DOT&PF):

The Alaska Department of Transportation & Public Facilities notes that Parcel 4 is needed to support small boat harbor operations and we are in the process of conveying the State-controlled tidelands (under an ILMA) to the City of Edna Bay as part of an active harbor replacement project. Please work with DOT&PF Southcoast Region in Juneau as the proposal moves forward.

DNR DMLW LCS response: Thank you for your review of the PD. The City of Edna Bay will be encouraged to work with DOT&PF before starting any plans in the Parcel 4 area.

Comments from DNR, Division of Forestry (DOF):

Thank you for the opportunity to comment on the PD for Edna Bay's municipal entitlement. The Division of Forestry appreciates that the DMLW preliminary decision intends Parcel 10 to be retained in state ownership due to the footprint of the ILMA with DOF for the log transfer facility (LTF). However, DMLW proposes to grant to Edna Bay Parcel 11, which is on the east side of the ILMA. Transfer of Parcel 11, specifically Lot 2, is very likely to complicate State management of the offshore tidelands due to the existing log storage use.

We support granting Edna Bay sufficient lands for their purposes, and those parcels are well-suited for basic industrial development and commercial growth, due to their proximity to the LTF. However, we are concerned that the City will want unimpeded access to navigable waters if they develop the uplands. Based on our experience, it is not practical to move barges through a log rafting and storage area, which, when active, acts as a fixed improvement. The Division of Forestry's use of the tidelands for the LTF will be long term, but will likely be intermittent due to the nature of forest management. Trees take time to regenerate, and between timber sales on

Kosciusko Island, these tidelands may appear unused. The DOF is concerned that other uses may inadvertently or overtly displace the log storage area during the LTF's dormancy.

We believe that desire by the City of Edna Bay to access Parcel 11, Lot 2 via the tidelands will likely lead to conflict and restrict the State's management of the LTF. The ILMA stipulates a 100-foot corridor to Lot 2 from seaward for general upland access. This corridor was developed for generic access to the standard shoreside public easement. The existing 100-foot access corridor would likely constrain upland development possibilities on Lot 2, would limit most commercial barge traffic, and subsequently be viewed as arbitrary if log rafts were not present. The DOF is concerned that use of the tidelands could, with time, be viewed as a previously existing access right by the city or a future third party.

The Division of Forestry requests that DMLW consider the value of the tideland space and adequately protect the needs of the State for access to the State Forest. While the DOF recognizes the desirability of Lot 2 to the City of Edna Bay, it views the log storage area as a high-level strategic resource important to long term forest management.

DNR DMLW LCS response: Thank you for your review of the PD. Recent communication with the City of Edna Bay regarding their intent with Lot 2 of Parcel 11 indicated that its future use would be industrial in nature and they understand the complicated scenario an LTF creates. Parcel 11 was chosen for its location to keep commercial and industrial businesses out of the main part of the City of Edna Bay.

LCS feels that by conveying Lot 2 of Parcel 11 to the City of Edna Bay, this brings the City of Edna Bay closer to its full entitlement and relieves the State of having to find available land in an already limited area, such as reclassifying wildlife habitat or important watershed land to settlement.

Comments from the City of Edna Bay:

The City of Edna Bay would like to thank you and the staff at DNR who have worked diligently to finalize conveyance of our municipal entitlement lands. We appreciate the reclassification of land that allowed us to select parcels within our community that were not originally available. This especially includes the area identified as Parcel 19 in the Prince of Wales Island Area Plan Amendment LCO No. SE-98-001A07.

While we are pleased with the list of parcels the City will be receiving in its entitlement, there is a point of concern we would like to bring forward before the Final Finding and Decision.

As we have expressed in previous conversations with staff, and noted in a comment letter during the Area Plan Amendment LCO SE-98-001A07, the City of Edna Bay has a priority interest in what was then identified as Parcel 19 due to its ideal location near the school, access to landline phone service, and its favorable geographic potential for development of a site for the City Town Hall and Emergency Services building. We have been working to obtain a tideland conveyance immediately adjacent to this parcel to develop a public recreation area and small boat harbor.

It was the understanding of the City and public at the time we requested selection of Parcel 19, the old Edna Bay townsite, that the USFS administrative site was outside of this area.

Following a reduction in their management area on Kosciusko Island in 2014, we heard there was an exchange between DNR and the USFS regarding the easement/location of their administrative site in Edna Bay. USFS personnel have cleared and flagged lines in an area above the road in Edna Bay we believed to be that site.

However, the map of Parcel 8 in the Preliminary Decision shows it to be located below the road near the beach. This 5.68 acre area, Lot 10, which appears to be excluded on the most recent map, lies at the heart of our future municipal development plans.

We would appreciate clarification regarding the possible change in status of the USFS Administrative Site in Edna Bay before the Final Finding and Decision is issued. If there is an avenue for the City to receive Lot 10, we would like to have it included in our selections.

DNR DMLW LCS response: The area plan amendment and land classification order (LCO No. SE-98-001A07) did change the classification of Government Lot 3 in Section 28, Township 68 South, Range 76 East, Copper River Meridian from Public Facilities to Settlement in order to facilitate the entitlement to the City of Edna Bay. However, Lot 10 within Government Lot 3 is currently ANILCA topfiled and the State does not hold title to this 5.68 acre parcel, therefore DNR cannot approve to convey it to a municipality. Should the ANILCA topfiling be removed, and the State requests a transfer of ownership from the Federal Government, the classification of Settlement will accompany the parcel. Only after a finding and decision may the parcel be conveyed out of state ownership, if it is in the best interest of the State to do so.

VI. DISCUSSION AND FINAL FINDING AND DECISION

Through this Final Finding and Decision, DNR determined that it is in the best interest of the State to convey 313.854 acres of state land with management authority transferred to the City of Edna Bay upon the effective date of this decision. There are no overriding state interests in retaining these selections and the conveyance to the City of Edna Bay is consistent with the requirements for conveyance under AS 29.65, and the management intent requirements of the Prince of Wales Island Area Plan.

Lands Approved for Conveyance

Table 1 below lists those lands 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 of Edna Bay, to bring the acreage of this conveyance closer to the City of Edna Bay's overall entitlement.

Table 1

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), W1/2SE1/4NW1/4 (20 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 Approved Acres:		313.854

Lands to Be Postponed

Lot 10, containing 5.68 acres, in Section 28, Township 68 South, Range 76 East, Copper River Meridian (Parcel 8) will be postponed for adjudication until such time the parcel may come into state ownership. The parcel is ANILCA topfiled and cannot be conveyed to any municipality since it is not state owned. If and when the State receives title to Lot 10, the City of Edna Bay may request ownership to fulfill its entitlement. However, a decision process will need to take place to determine if it would be in the best interest of the State to convey the parcel out of state ownership.

Lands to Be Rejected

Table 2 below lists those lands that were selected by the City of Edna Bay that are rejected in this decision. These include lands to be retained by the State because the interest of the State outweighs that of the City of Edna Bay, or where the classification was inappropriate for conveyance and not vacant, unappropriated, unreserved (VUU³) general grant land. Parcel 1 holds a land classification of Wildlife Habitat. Parcel 10 is classified as Forestry Land and has an Interagency Land Management Agreement (ILMA) with the Division of Forestry.

³ 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).


Table 2

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 Rejected Acres:		53.925


The following are the findings relative to this decision. For the reasons stated in the PD and in this FFD, DNR finds that:

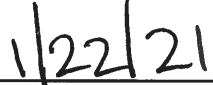
1. It is appropriate to convey approximately 313.854 acres of state land to the City of Edna Bay. The State’s interest in retaining these lands does not outweigh the City of Edna Bay’s interest in obtaining them.
2. It is appropriate to postpone adjudication of Lot 10 (5.68 acres) in Parcel 8 if and when the parcel comes into state ownership.
3. It is appropriate to reject 53.925 acres of city land selections where the land classification was inappropriate for conveyance and the existence of an ILMA provide an overriding interest for the State to retain the land.

The findings presented above have been reviewed and considered. The Public Notice has been accomplished in accordance with AS 38.05.945. The case files have been found to be complete and the requirements of all applicable statutes have been satisfied. It has been determined that it is in the best interest of the State to proceed with the conveyances identified in this FFD to the City of Edna Bay under the authority of AS 29.65.


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


 Date


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


 Date

APPEAL PROVISION

A person affected by this decision who provided timely written comment or public hearing testimony on the preliminary decision may appeal it, in accordance with *11 AAC 02*. Any appeal 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 West 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 907-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. Under *11 AAC 02.030*, appeals filed under *11 AAC 02* must be accompanied by the fee established in *11 AAC 05.160(d)(1)(F)*, which has been set at \$200 under the provisions of *11 AAC 05.160(a)* and *(b)*.

If no appeal is filed by the appeal deadline, this decision goes into effect as a final administrative order and decision of the department on the 31st calendar day after issuance. An eligible person must first appeal this decision in accordance with *11 AAC 02* before appealing this decision to the Superior Court (*11 AAC 02.020(a)* and *(b)*). A copy of *11 AAC 02* may be obtained from any regional information office of the Department of Natural Resources.

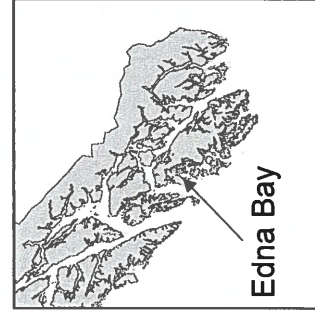
City of Edna Bay

Municipal Entitlement

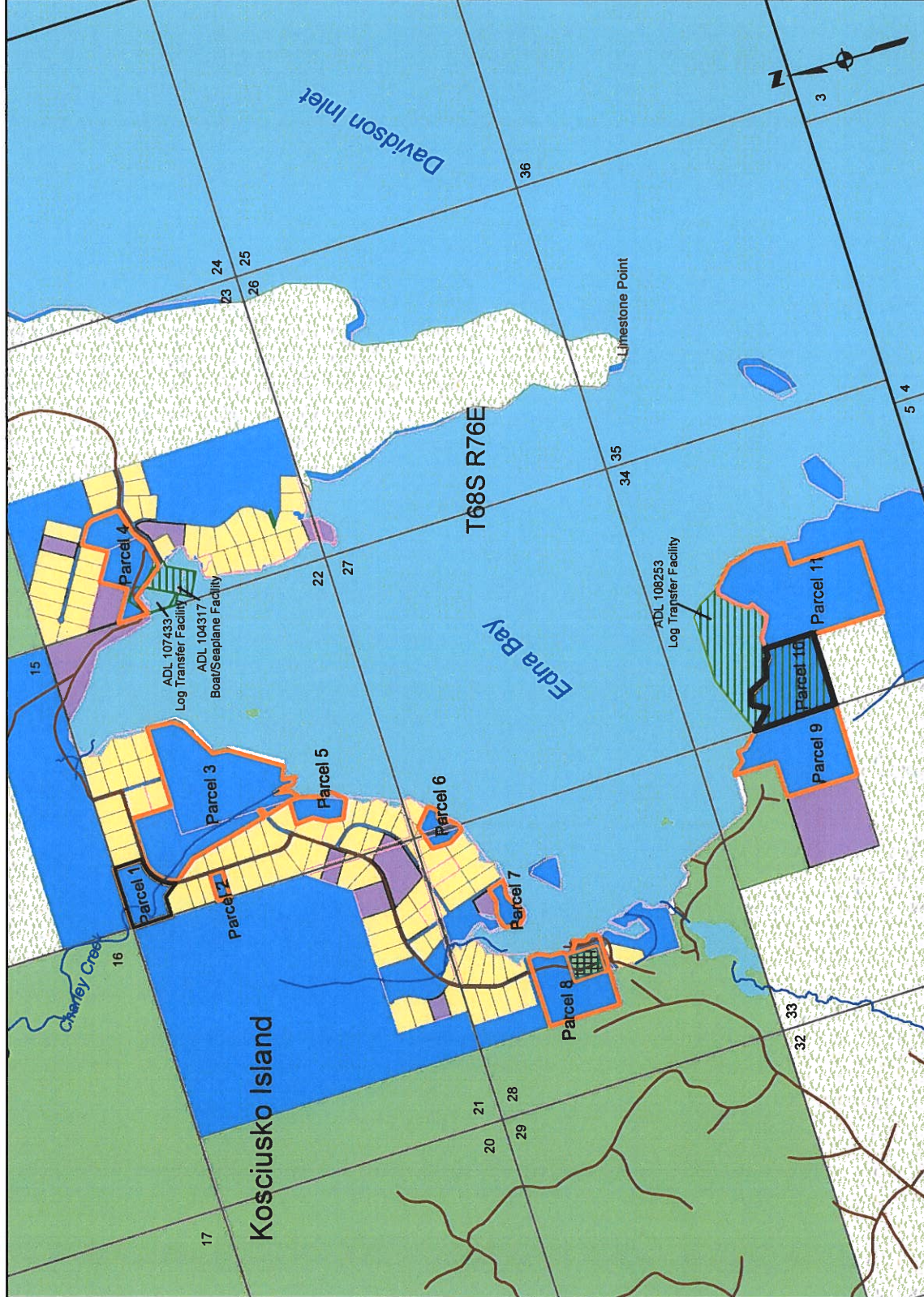
Final Finding & Decision ADL 108519

Legend	
	Anadromous Streams
	Roads
	Surveyed Lots
	Approved for Conveyance
	Postponed Selection
	Rejected Selection
	State Land, TA or PA
	SE State Forest
	ILMA
	ANILCA Toppled
	Mental Health Land
	Private Land
	US Forest Service

Unit 8, Subunit 8b - POWAP



Edna Bay



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

January 2021