

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

Preliminary Decision under AS 38.05.035(e)

**Tideland Conveyance to City and Borough of Sitka under AS 38.05.825
ADL 109021—Sitka Channel**

PROPOSED ACTION: The Alaska Department of Natural Resources, Division of Mining, Land and Water, Southeast Region (DMLW), proposes to convey one parcel of State tide and submerged land to the City and Borough of Sitka (“CBS”), pursuant to AS 38.05.825, Conveyance of Tide and Submerged Land to municipalities, containing a total of approximately 23 acres, final acreage will be determined by completing survey requirements. See Attachment A for a map of the parcel to be conveyed.

This decision determines whether the tide and submerged land selection by CBS meets the requirements for conveyance in accordance with AS 38.05.825, the Submerged Lands Act of 1953, and the Equal Footing Doctrine.

The public is invited to comment on this Preliminary Decision (PD). **The deadline for comments to be received is on or before May 11, 2020.** Refer to this decision under the heading PUBLIC NOTICE, DECISION AND APPEAL PROCEDURES on the final page of this decision for details on how, when and where to submit your comments.

AUTHORITY: The applicable authority includes Alaska Statutes AS 38.05.035(e) and AS 38.05.825. The Director, Division of Mining, Land and Water is authorized by AS 38.05.035(a) (6) to act on behalf of the State in this matter. The Director has delegated to the Regional Manager the authority to approve proposed and final decisions under AS 38.05.035(e), Department Order 3.

ADMINISTRATIVE RECORD: DMLW tideland conveyance casefile ADL 109021. The 2002 Northern Southeast Area Plan (“NSEAP”) is incorporated by reference.

SCOPE OF DECISION: The scope of administrative review, under AS 38.05.035(e)(1)-(2), for this proposed land transfer is limited to the decision to transfer title to this land from the State of Alaska to the City and Borough of Sitka. It does not take into account any future development, or the effects of such development, that may occur after the transfer.

DESCRIPTION:

Location: The parcel is located in Sitka Channel. The parcel is located within the City and Borough of Sitka (attachment A). It is located within Sections 34 and 35, Township 55 South, Range 63 East, Copper River Meridian, more specifically described as follows:

Proposed conveyance parcel is approximately 23 acres of tide and submerged lands adjacent to the northeast side of Japonski Island. Final acreage will be determined by the required ATS.

Municipality: City and Borough of Sitka

Native Corporation: Sealaska Corporation

Village Corporation: Shee Atika Corporation

Tribal Contact: Sitka Tribe of Alaska & Central Council Tlingit & Haida Indian Tribes of Alaska

Water Bodies: The parcel is located in a navigable a body of water, Sitka Channel.

Title: Acquisition Authority: 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.

Background: Applications for conveyance of this tideland parcel, totaling 23 acres, were received on July 25, 2019. A city resolution dated October 9, 2018 approved the proposed development.

The CBS has applied for a tideland conveyance of tide and submerged lands in order to construct a new seaplane base. The existing seaplane base located on the opposite side of the Sitka Channel is in disrepair and no longer meets the needs of the community. The proposed seaplane base will include amenities including fuel, upland parking, maintenance, a pullout ramp, a drive down gangway, and an office in addition to larger seaplane docking floats.

Planning and Classification: 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 general management and intent of the NSEAP in the Southern Region: Baranof Island Area, Unit BT-132 Japonski Island, Sitka was reviewed for consistency with the proposed conveyance. Lands are designated as Public Facilities – Retain (Pr) and classified as Reserved Use Land, under Land Classification Order No. SE-02-001.

Management intent of unit BT-132: *To ensure the continued operation of the Sitka airport, U.S. Coast Guard, and related public facilities. Development authorizations granted by the Department should ensure that this consideration is met. This tideland unit surrounds Japonski Island, which is an important area of public facilities, especially related to aviation. (NSEAP 3-275)*

The proposed development is compatible with the area plan classifications.

Access, including access to & along public waters: The parcel will be accessed from Lot 15A of USS 1496 (Plat 2009-9), a state-owned upland parcel (#1-9208-000) located at the end of Seward Avenue on Japonski Island. The CBS intends to acquire the parcel from the State of Alaska Department of Education and Early Development (DEED). The acquisition of the uplands is outside of the scope of this decision. A wood trestle and drive-down gangway will connect the upland parking area to the seaplane floats. The floats will be accessible via floatplane or vessel from the Sitka Channel. 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. In addition, before a disposal of State land, AS 38.05.127 requires a determination by the DMLW regarding the reservation of specific public access easements to and along these waters.

In the final decision on this proposed action, the DMLW will determine whether this disposal of State interest will reserve a public access easement pursuant to AS 38.05.127(a)(2). Pursuant to 11 AAC 51.045, the DMLW will consider comments and evidence provided by the Alaska Department of Fish and Game (ADF&G) and from a municipality or other person during the public notice and review period in making this determination. Public notice of this decision constitutes notice that the DMLW intends to determine, based on comments and supporting information, whether the easement is necessary to ensure public access, or whether regulating or limiting public access is necessary for other beneficial uses or public purposes, such as public safety or security.

Those interested in the outcome of this public access issue should submit written comments. Persons who submit comments during the public comment period will receive a copy of the final finding decision.

Reservation of Mineral Estate: The State of Alaska, as required by Section 6(i) of the Alaska Statehood Act and AS 38.05.125, expressly saves, excepts and reserves out of the grant those resources specified by statute. These include, but are not limited to, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, including the right to explore the same. The State also reserves the right to enter the land for the purposes of exploring for, developing, and producing these mineral resources.

Hazardous Materials and Potential Contamination: It is the DMLW's management responsibility to protect the overall public interest if there is a reasonable expectation that a hazardous condition, or hazardous, toxic or radiological material or contamination from such material exist or is known to exist on the land proposed for disposal. No hazardous material or contamination from hazardous material is known to exist on the land proposed for conveyance; therefore, the environmental risk associated with this proposed conveyance is minimal.

It is up to the City & Borough of Sitka to inspect the area of their tideland selection and familiarize itself with the condition and quality 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 here for conveyance. 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.

Survey: An Alaska Tideland Survey (ATS) will be required for parcels that are not adequately surveyed and platted for conveyance, at the expense of the CBS, prior to issuance of a State tideland patent. The parcel will require survey. CBS 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.

Agency Review: The conveyance application documents were distributed to State agencies for review from January 29, 2020 through February 12, 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.

The agencies contacted were Department of Fish and Game; Department of Environmental Conservation; Department of Transportation & Public Facilities (DOT&PF); DNR-Division of Mining Land & Water sections; DNR-Division of Agriculture; DNR-Division of Geological & Geophysical Surveys; DNR-Division of Parks and Outdoor Recreation; DNR-State Historic Preservation Office; and the Mental Health Trust Land Office.

Agency Comments:

The DNR DMLW SERO received brief comments of non-objection from the following agencies: DNR-DMLW Public Access and Assertion Defense Section, DNR Division of Oil and Gas, and DNR Division of Parks and Outdoor Recreation.

The DMLW response: The DMLW appreciates your review of the application materials.

DOT&PF comment: The “ADL 109021 Diagrams” attachment appears to depict a proposed seaplane base access road, which would connect to Airport Road. The “AR Table” attachment states that the site will be accessed from an upland parcel located at the end of Seward Avenue. Some clarification seems necessary. The DOT&PF requested that the DMLW work with the DOT&PF Southcoast Region and Airport/Aviation groups.

The DMLW SERO response: The DMLW verified with the applicant that the planned access route is via Seward Avenue. The DMLW will collaborate with the DOT&PF Southcoast Region and Airport/Aviation groups if necessary.

DNR-DMLW Survey Section comment: In order to be surveyed, the proposed conveyance parcel requires controlling parameters to allow the surveyor to locate and define the area. In addition, the CBS is not acquiring all of the uplands adjacent to the project area. The current owner of the other adjacent uplands may have littoral rights that should be considered. Furthermore, the survey section offered a correction to the language written in the “Public Access and Utility Easements” section of the agency review table. Lastly, the survey section advised that the DMLW verify that the project area was not reserved by the military at statehood.

The DMLW response: The applicant will be required to work with the survey section for standards and guidance during the surveying phase of the project. The two affected adjacent landowners (State of Alaska DEED and Southeast Alaska Regional Health Consortium (SEARHC)) will be noticed of the conveyance preliminary decision during the public notice period. The public access and utility easement language will be corrected in this preliminary decision. Lastly, the DMLW has verified that ownership of the project area was not reserved to the military at statehood. A title report has also been requested from the DMLW Realty Services section.

DNR-DMLW Resource Assessment and Development Section comment: RADS finds the construction of a seaplane base to support the management intent for Unit BT-132. The tideland conveyance is a viable land disposal project and should move forward. The upland parcel was conveyed to DEED as public and charitable use land under AS 35.05.810, in QCD 1372. Therefore, the transfer of the parcel from DEED to Sitka must meet the requirements of AS 38.05.810. Because Sitka has remaining municipal entitlement to fulfill, under the provisions of AS 29.65.100(c), this

parcel shall be credited toward fulfillment of the entitlement, and there should be no fee associated with this land transfer.

The DMLW response: The DMLW appreciates your review of the application materials. The transfer of the upland parcel from DEED to the CBS is beyond the scope of this project.

ADF&G Division of Wildlife Conservation comment: Pacific herring spawn on intertidal and subtidal substrates within the project area in spring, and incubating eggs hatch about two weeks later. Avoiding construction and dredging activities during spring, generally mid-March through mid-May, would avoid negatively affecting the resource. In addition, extending the seawall or constructing a breakwater may alter herring schooling and migration between north and south Sitka Sound; a floating breakwater will maintain fish passage. Furthermore, Minke whales are present in the project area, though are not listed in the Biological Resources document. Gray whales migrate through and feed in the area during most of the year, and Humpback whales feed in the area during spring. Lastly, since the proposed project will be exclusively located in marine waters, a fish habitat permit is not required.

The DMLW response: The DMLW will provide recommendations on construction timing to the CBS. However, the scope of this decision is limited to the decision to transfer title to this land from the State of Alaska to the City and Borough of Sitka. It does not take into account any future development, or the effects of such development, that may occur after the transfer.

Public Notice: The public is invited to comment on this Preliminary Decision. Please see the Public Notice section, at the end of this document, for details on submission of comments, including comment deadline and conditions.

Compliance with qualifications under AS 38.05.825: 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, and if the land is within the boundaries of the municipality; the use does not unreasonably interfere with navigation or public access; the municipality has applied for conveyance; the land is not subject to shore fisheries lease under AS 38.05.082; the land classification is consistent with or compatible with the proposed use; and the land is required for a public or private development approved by the municipality.

- Public Interest- The public interest in retaining these lands in State ownership does not outweigh the municipal interest in managing these tidelands, because the conveyance will accommodate municipal facilities for use by the public. The DMLW believes that there are no other overriding State interests; 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 is consistent with the proposed action.
- Municipal Approval of Development- The assembly approved the proposed development for this tideland conveyance by City and Borough of Sitka Resolution 2018-22.

DISCUSSION AND ALTERNATIVES:

Alternatives considered:

1. Approve the proposed conveyance of the parcel. City and Borough of Sitka will have the ability to manage the parcel, which is of local interest as they contain municipal facilities.
2. Deny the proposed conveyance of the parcel. The DMLW will continue to manage this parcel.

Preferred Alternative: Alternative No. 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 Sitka. Facilitating community development activities in Sitka indirectly provides economic benefit to the State by encouraging settlement and related economic activity. Additionally, the project meets the intent of the NSEAP. The DMLW 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, the DMLW must convey the parcel subject to completion of an ATS.

RECOMMENDATION:

The DMLW recommends conveyance of tideland parcel described herein to the City and Borough of Sitka, subject to the following conditions:

1. Land management authority shall be granted upon the effective date of the final finding and decision.
2. The conveyance shall be 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 and management authority for the land conveyed under this authority reverts to the State upon dissolution of the municipality; 3) Grantee takes management authority and title to the tide and submerged lands subject to the rights of the public under the Public Trust Doctrine.
3. State patent will not be issued until completion of the required ATS for the parcel.
4. Survey costs shall be borne by the municipality.
5. Pursuant to AS 38.05.127, the parcel shall be subject to a public access easement, fifty feet in width, seaward of the mean high water line.
6. Pursuant to AS 38.05.125 the mineral estate shall not be conveyed.

The final finding and decision will incorporate changes justified by comments during the public review process.

Signature page follows:

Prepared by:

 \s\ John King
John King
Natural Resource Specialist II

 4/7/2020
Date

The preliminary decision presented above has been reviewed and considered. I find that the recommended action may be in the State's best interest and is hereby approved to proceed to public notice.

 \s\ Lee V. Cole, Jr.
Lee V. Cole, Jr.
Regional Manager

 4/7/2020
Date

PUBLIC NOTICE, FINAL DECISION AND APPEAL PROCESS:

Requesting Input for a Proposed Land Conveyance:
City and Borough of Sitka Seaplane Base – ADL 109021

Comment Period Ends 5:00PM, Monday, May 11th, 2020

This proposed project includes offering for conveyance an unsurveyed parcel described in the Preliminary Decision document.

Location: Sitka Channel, City and Borough of Sitka

In accordance with the provisions AS 38.05.945, the Division of Mining, Land and Water has prepared a preliminary written decision proposing to convey a parcel containing approximately 23 acres of State-owned tide and submerged land to the City and Borough of Sitka within its municipal boundaries. The parcel conveyance will be used for a new seaplane base.

To obtain the notice, Preliminary Decision, or instructions on submitting comment, go to <http://aws.state.ak.us/OnlinePublicNotices/>. For assistance in obtaining the documents by an alternative method, to request auxiliary aids, services, or special accommodations, contact DNR's Public Information Centers on State work days, Monday through Friday, between 10AM and 5PM in Anchorage at 907-269-8400, Fairbanks at 907-451-2705, or the Southeast Land Office in Juneau at 907-465-3400 (TTY for the hearing impaired for all locations: 711 for Alaska relay or 800-770-8973), or go to <http://dnr.alaska.gov/commis/pic/> for additional contact information. Individuals who require special assistance must request assistance from the Public Information Center in Anchorage no later than 4:00 PM, Monday, May 4th, 2020

The deadline for public comment is 5:00PM, Monday, May 11th, 2020. Only persons from whom DNR DMLW Southeast Regional Office receives timely, written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision. Written comment may be received by fax, email or postal mail. To submit comments or for direct inquiries, contact John King, Alaska Department of Natural Resources, Division of Mining, Land, & Water, Southeast Regional Office, P.O. Box 111020, Juneau, AK 99811-1020. Fax # 907-500-9011, john.king@alaska.gov. If you have questions, call John King at 907-465-3511.

If no significant change is required, the Preliminary Decision including any minor changes and a summary of comments and responses, will be issued as the Final Finding and Decision, without further notice. A copy of the Final Finding and Decision will be sent to any persons who commented timely on the Preliminary Decision.

DNR reserves the right to waive technical defects in this notice.

Attachment A: Parcel Map