

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

**PRELIMINARY DECISION
CONVEYANCE OF TIDE AND SUBMERGED
LAND UNDER AS 38.05.825**

**CITY OF SAINT GEORGE
ZAPADNI BAY HARBOR AREA
ADL 231736**

I. PROPOSED ACTION

The Department of Natural Resources (DNR) proposes to convey 2.499 acres of state-owned tide and submerged lands (tideland) to the City of Saint George under AS 38.05.825: Conveyance of Tide and Submerged Land to Municipalities.

This Preliminary Decision (PD) covers three tracts for a total of 2.499 acres of state-owned tidelands selected by the City of Saint George located within Zapadni Bay on the northwest shore of Saint George Island, which is the southern-most of the Pribilof Islands. These platted tracts are identified on the Alaska Tideland Survey 1364A (amended), Plat No. 93-19 as Tract H (1.575 acres), Tract I (0.669 acres), and Tract J (0.255 acres). These tracts are intended to be utilized by the city for the installation of a new bulk fuel facility and storage area.

The city would like the capability to provide affordable fuel to residents and commercial interests. By obtaining these tracts the city would be the owner and operator of the new bulk fuel facility; the city would no longer have to depend on a third party making the decision whether or not to supply fuel for the community. The city already owns the surrounding tracts in the same harbor (Tracts A, B, C, D, E, & G/Patent 390).

Furthermore, there is a proposed future development for this harbor, and these tracts may become part of the harbor design, since the Alaska Department of Transportation & Public Facilities has been working on developing various concept designs for the area.

This decision determines whether or not the tide and submerged land selections by the City of Saint George meets the requirements for conveyance in accordance to AS 38.05.825.

The public is invited to comment on this Preliminary Decision (PD). The deadline for comments to be received is DECEMBER 16, 2013. Refer to this decision under the heading 'PUBLIC NOTICE, DECISION AND APPEAL PROCEDURES' for details on how, when and where to submit your comments.

II. AUTHORITY

The proposed action for this PD is authorized pursuant to Alaska State Statutes (AS) and the Alaska Administrative Code (AAC), in particular to AS 38.05, AS 38.05.825, AS 38.05.035(e), AS 38.05.125, AS 38.05.127, 11 AAC 51 and 11 AAC 55.

III. ADMINISTRATION RECORD

The administrative record for this PD is case file Alaska Division of Lands ADL 231736, which includes, but is not limited to the following: the Alaska Department of Environmental Conservation Contaminated Sites Map, and the State of Alaska Department of Transportation & Public Facilities Central Region website.

IV. SCOPE OF THE DECISION

The scope of this DNR review is limited to the determination of whether or not it is appropriate to convey the aforementioned state-owned tideland selections to the City of Saint George under AS 38.05.825. It additionally includes, if any, the identification of third party interests and stipulations necessary and appropriate to ensure that statutory requirements have been met. Plus, there will be a determination of whether imposing a 'to' and 'along' easement under AS 38.05.127 is appropriate.

V. DESCRIPTION

A. Location and Geographical Features

| | |
|------------------------|--|
| Geographic: | Zapadni Bay, on SW side of Saint George Island in the Pribilof Islands, Bering Sea, South-central Region, Alaska |
| Borough/Municipality: | City of Saint George |
| Meridian: | Seward (S) |
| Regional Native Corp.: | Aleut/Pribilof Island Comm. Development Assoc. |
| Native Village Corp.: | St. George Tanaq Corporation |
| USGS Map Coverage: | Pribilof Islands (1:250,000) |

B. Legal Description - Land Status - Third Party Interests

TABLE 1 below identifies the City of Saint George tideland selections by Meridian, Township, Range, Section, including title status and third party interests, if any. The State of Alaska holds fee title to the mineral estates through the Statehood Act of 1958 and the tidelands through the Submerged Lands Act of 1953. The state will convey the approved tidelands in this decision, but will retain the mineral estate in state ownership.

TABLE 1

LEGAL DESCRIPTION – LAND STATUS – THIRD PARTY INTEREST

S T42S, R130W, Section 4

| Title | Date | State Case File |
|---|------------------------------|--|
| Alaska Statehood Act PL 85-508 July 7, 1958 (27 Stat. 688) as amended | Statehood January 3, 1959 | Submerged Lands Act 1953 Equal Footing Doctrine |
| Third Party Interest: YES | | |
| Surface <ul style="list-style-type: none"> • ADL 225490: Awarded/Non-objection/Interim Authorization for environmental clean-up to expired on 12/31/2014 | | |

VI. PRELIMINARY DECISION

A. Background

The City of Saint George has an existing boat harbor on the northwest shore of Saint George Island, and the three selected tracts of this decision have existing improvements consisting of existing bulk fuel tanks and storage areas (Tracts H, I & J). These three tracts were previously leased by two companies in a joint venture who were the main providers for delivering fuel to the community from their bulk fuel facility. These leases have since expired and the DNR/Southcentral Regional Office has determined not to renew these leases. The renewal lease applications were appealed, but denied by the DNR Commissioner, and an interim Land Use Permit was issued in association with Tract H for an environmental clean-up where the existing bulk fuel tanks are located.

This city selected these three tracts in order to obtain funds to install their own bulk fuel facility to keep the community from depending on a third party for fuel and risking not having fuel available. The city has been working with Alaska Energy Authority (AEA) and the Denali Commission to install a new bulk fuel facility. The city has secured funds of \$2.2 million for this installation. Furthermore, the Alaska Department of Transportation has been working on various concept designs for the harbor area that could also utilize the selected three tracts of this decision. The three tracts might be encompassed into the larger project area for the harbor development (http://dot.alaska.gov/project_info/index.shtml). The City of Saint George already holds title to Tracts A, B, C, D, E & G/Patent 390, within the Saint George Harbor (ATS 1364A, Plat 93-19, 5/12/1993).

B. Planning, Classification, Mineral Orders and Local Planning

1. Planning

Saint George Island is not covered under a state DNR area plan.

2. Classification

DNR has classified the tideland within ATS 1364A as Waterfront Development Land under Classification Order SC 93-005. Conveyance of these three tracts is appropriate under this classification.

3. Mineral Orders

The mineral estate is reserved to the state pursuant to AS 38.05.125. There are no known mineral orders affecting the city's tideland selection at this time.

4. Local Planning

The City of Saint George does not have any land use planning authority; hence the city does not have a comprehensive or zoning codes.

The 2008 Saint George Community Strategic plan is located at <http://www.commerce.state.ak.us/dca/plans/SaintGeorge-CP-2007.pdf>. The 2006 Saint George Traditional Council Strategic Plan: <http://www.commerce.state.ak.us/dca/plans/SaintGeorge-SAP-2006.pdf>

C. Access

Access to the City of Saint George Island is by plane or boat. Access to the three plated tracts is available through adjoining public rights-of-way known as Waterfront Drive and Malavansky Drive for Tract H and Malavansky Drive for I and J. Other connecting roads, Harbor View Drive or Zapadni Bay Road to Waterfront Drive provide access to the area of the three selected. These roads function as public access for vehicular and pedestrian traffic.

The City of Saint George will be subject to the requirements of the *Public Trust Doctrine* as it applies to these lands for land access and use, including the requirements under AS 38.05.825.

1. Navigable

The waters of Zapadni Bay of Saint George Island are navigable and public as described in 11 AAC 51.035.

2. To & Along Easements

Pursuant to AS 38.05.127, the state must impose a continuous '*along*' easement that extends 50 feet upland and seaward of the mean high water mark and a '*to*' easement that is 50 feet wide that connects to the '*along*' easement, unless DNR determines under 11 AAC 51.045(b) that an access easement is not necessary to ensure free access or that regulating public access is necessary for another public purpose or beneficial use. Under this condition, alternative access must be provided pursuant to 11 AAC 51.45(c), unless it is imprudent to do so.

DNR has determined that an "*along*" easement landward and seaward adjacent to the mean high water mark should not be imposed. The plated rights-of-way provide access for these tracts and additional easements would serve no useful access function for the public.

D. Reservation of Mineral Estate

Conveyance of tideland to a municipality under AS 38.05.825 conveys no interest in the mineral estate. All mineral related permits, licenses, claims and leases affecting the tideland proposed 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.

E. Hazardous Substances and Contaminations

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 tidelands being proposed for disposal. Based on review of the Alaska Department of Environmental Conservation's list of Contaminated Sites Southeast Alaska, no hazardous material or contamination from hazardous material is known at this time to affect this tideland selection.

The City of Saint George is expected to inspect this tideland selection and familiarize itself with regards to the condition and quality of the tideland. The State of Alaska makes no representation and no warranty, expressed or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminates, or pollutants on the tideland proposed for conveyance. The state assumes no liability for the removal of hazardous substances, hazardous wastes, contaminates, or neither pollutants, nor any liability for the remediation of the site should such substances ever becomes identified.

DNR has issued a permit for environmental clean-up on Tract H that will expire 12/31/2014.

F. Survey and Appraisal

The selected three tracts of this decision have been surveyed: Alaska Tidelands Survey 1364A, Plat No. 93-19.

There is no requirement under state statutes to appraise the land prior to conveyance under this authority.

G. Conditional Leases and Permits

The city will receive management authority and equitable title to the tideland approved for conveyance in this PD once the FFD is effective. This will allow the city to approve conditional leases and permits. However, AS 38.05.825(c) forbids the sale of a tideland conveyed under AS 38.05.825.

H. Unauthorized Use

DNR has not physically inspected the city's tideland selection adjudicated herein for the presence of unauthorized use, but it has reviewed department records and is unaware of any existing unauthorized use. The city is expected to, and has been given the opportunity to inspect its land selection to familiarize itself with the condition and quality of the land.

I. Disposition of Leases, Permits and Applications

Administration of active leases, permits, and easements in the surface estate issued by DNR on tideland to be conveyed will be transferred to the city if/when the FFD becomes effective, unless such authorizations are specifically excluded from the conveyance.

Applications that have not been adjudicated and issued will be closed. A review of DNR records shows one permit has been issued for an environmental clean-up on Tract H.

J. Archaeological Resources

The Alaska State Historical Preservation Office (SHPO) maintains the Alaska Heritage Resources Survey (AHRIS) which is an inventory of all reported historic, prehistoric and archaeological sites in the state. There are no known archaeological or cultural resources on the tideland selected for conveyance in this PD, however, should such resources be found once these tidelands are under construction or conveyed the city must take those actions required by law in accordance with AS 41.35.070(d).

K. Agency Review

The intent of an agency review is to request comments from state agencies that may be affected by this tideland disposal. Agencies are given the opportunity to evaluate and comment on the city's tideland selection to determine if the state should retain the tideland selection and, if so, to provide supporting reasons for the requested action. Additionally, agencies are requested to identify any stipulations that may be appropriate if the tideland selection is approved for conveyance.

L. State Agency Comments and DNR responses

Comments from Alaska Department of Fish and Game (ADF&G), Access Defense SF-HQ:

The Department of Fish and Game's Access Defense SF-HQ responded that ADF&G has no concerns or objections to the conveyance as proposed.

DNR Response: Acknowledged.

VII. DISCUSSION AND ALTERNATIVES

A. Discussion

This Preliminary Decision covers 2.499 acres of state-owned tidelands consisting of Tract H 1.575 acres, Tract I 0.669 acres, and Tract J 0.255 acres for the installation of a new bulk fuel facility. The surrounding platted tracts are already city owned (Tracts: A, B, C, D, E, & G/Patent 390). The three selected tracts would provide the city control over the harbor area for the proposed bulk fuel facility and the future redevelopment of the harbor. Also, \$2.2 million has been secured for the new bulk fuel facility. DNR has determined in this decision that the state-owned tidelands are appropriate for conveyance to the City of Saint George.

The public interest in retaining state ownership of the tideland tracts does not outweigh the city's interest in obtaining these tidelands, and all other applicable conditions affecting the transfer of state tidelands under AS 38.05.825 have been met. There is a distinct benefit to the public by approving the conveyance of state tidelands since this will support continued development of the city's maritime infrastructure and support the general economic development of Saint George community more generally.

During the agency review process there were no impositions, concerns or objections received in respect to this action.

DNR has determined that an "*along*" easement landward and seaward adjacent to the mean high water mark should not be imposed. The platted rights-of-way provide access for these tracts and additional easements would serve no useful access function for the public.

Management authority will be transferred once the Final Finding and Decision is written and becomes effective.

B. Alternatives

The three following alternative actions are options to decide on for this decision:

1. Take no action to approve, reject or postpone the tide and submerged land selection by the City of Saint George. This alternative would, in effect, preclude the city's ownership of the tideland considered to be important for their community development. This action would be inconsistent with the purpose of AS 38.05.825 and inconsistent with the basis of 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.
2. Reject the city's selection in its entirety. This alternative would have the same effect as Alternative #1 and would, similarly, be inconsistent with the requirements of the statute.

3. Approve conveyance of the tideland with management authority to be transferred when the Final Finding and Decision becomes effective. This alternative meets the intent of the statute to convey tide and submerged land to municipalities where the municipality's interest in obtaining the land outweighs the public interest in retaining state ownership.

VIII. RECOMMENDATION

A. Recommended alternative

DNR has determined that Alternative 3 is the preferred action and is consistent with the intent and requirements of AS 38.05.825. The tide and submerged land selection by the City of Saint George is approved for conveyance, subject to the conditions, restrictions and reservations listed below.

B. Recommended conditions, restrictions and reservations

Applicable conditions, restrictions and reservations will be imposed upon transfer of equitable title if/when the Final finding and Decision (FFD) is effective and at the time of issuance of a conveyance document, including but not limited to the following:

1. Administration of state leases and permits in the surface estate, if any, will be transferred to the City of Saint George if/when the FFD is effective.
2. Management authority for the approved tidelands will be transferred to the City of Saint George if/when the FFD is effective. When approved, the city may execute leases and permits prior to issuance of a state conveyance document in accordance with AS 38.05.825.
3. All mineral related permits, licenses, claims and leases affecting the tideland proposed for conveyance, if any, will remain under the authority of the state.
4. The City of Saint George is subject to the requirements of the *Public Trust Doctrine* as it applies to these tidelands and to the requirements pursuant to AS 38.05.825.

C. Conveyance document to include following:

The approved Tideland conveyance to the City of Saint George is 'Subject to'

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 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.
3. 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.

D. Recommended action on tideland selection

The acreage in TABLE A is the surveyed acreage from Alaska Tideland Survey Plat No. 1364A (amended).

TABLE 'A'

TIDELAND PROPOSED FOR CONVEYANCE

| Map Parcel Name | MTRS | Plat/Tracts | Acreage |
|---|-----------------------------|--------------------|----------------|
| Zapadni Bay, St George Island part of the Pribilof Islands | S T42S, R130W, Section 4 | ATS 1364A | |
| | | H | 1.575 |
| | | I | 0.669 |
| | | J | 0.255 |
| | | Total Acres | 2.449 |

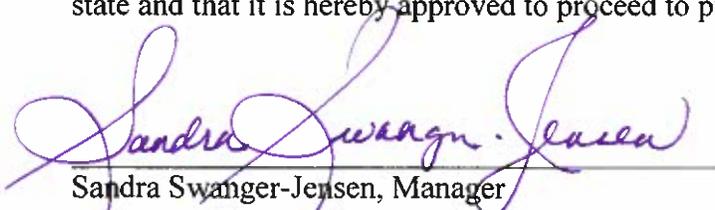
IX. FINDING

The following are findings of this Preliminary Decision:

1. That it is appropriate to convey 2.449 acres of state tidelands to the City of Saint George in accordance with the Public Doctrine Trust and pursuant to AS 38.05.825.
2. That the interest of the state to retain these tidelands does not outweigh the interest of the City of Saint George in obtaining the tidelands.
3. That the proposed capital improvement project for the installation of a new city bulk fuel facility is consistent with the management intent for Waterfront Development Land.

This is a Preliminary Decision and subsequent public and agency review may result in changes to the preferred alternative or disapproval of the proposed action altogether.

This Preliminary Decision, described above, represented 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.



Sandra Swanger-Jensen, Manager
Resource Assessment and Development
Municipal Entitlement

11-14-2013

Date

PUBLIC NOTICE, DECISION AND APPEAL PROCEDURES

The public is invited to comment on the Preliminary Decision propose to transfer ownership of state-owned tide and submerged lands to the City of Saint George. Comments may be provided in written form to the Division of Mining, Land and Water, Resource Assessment and Development Section, Municipal Entitlement Unit, Attention Sandra Swanger-Jensen, Municipal Entitlement Manager at 550 West 7th Avenue, Suite 1050, Anchorage, Alaska 99501-3579; by fax (907) 269-8915, or by electronic email to sandra.swanger-jensen@alaska.gov on or before DECEMBER 16, 2013 in order to ensure consideration.

The postmaster in the following community will be requested to post the public notice per AS 38.05.945: City of Saint George. 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 Department of Mining, Land and Water, Municipal Entitlement website at: <http://dnr.alaska.gov/mlw/muni/>. Additionally, the public notice will be sent to: the City of Saint George, Aleut Corporation, Saint George Tanaq Corporation, Aleutian Pribilof Islands Association, Inc., and the Saint George Tanaq Corporation Headquarters.

Following the Preliminary Decision (PD) deadline, all written responses received will be considered and this PD may be modified to incorporate public comments into the Final Finding and Decision (FFD). Only persons who comment in writing during the 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 appeal instructions paragraph. Please direct all inquiries or questions to Sandra Swanger-Jensen (907) 269-8526, or to the above address, fax or the electronic mail.

The Department of Natural Resources 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 Department of Natural Resources, Public Information Center in Anchorage between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, at TDD# (907) 269-8411.

ATTACHMENTS AS PART OF THIS DECISION

Overview of Tracts H, I & J

Record Plat No. 93-19 as ATS 1364A