

**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 CORDOVA CORDOVA HARBOR – ORCA INLET ADL 232192

I. PROPOSED ACTION

The Department of Natural Resources (DNR) proposes to convey approximately 50 acres of state-owned tide and submerged lands (herein ‘tideland’) to the City of Cordova under AS 38.05.825, Conveyance of Tide and Submerged Land to Municipalities. The City of Cordova has applied for the tidelands area consisting of approximately 50 acres in order to bring into compliance an encroachment area from a previous conveyance and to accommodate future harbor expansion and waterfront development.

The Cordova Harbor is located in the Orca Inlet off the City of Cordova. The tideland area covered by this decision is located seaward of the western boundary of Alaska Tideland Survey (ATS) 220, beginning 300 feet off the northwest edge of the breakwater area of the harbor, extending 800 feet to the southwest of the encroachment, then extending approximately 3,100 feet to the south, with its southern boundary aligned with the southern boundary of ATS 220.

This decision determines whether or not the tide and submerged land selection by the City of Cordova meets the requirements for conveyance in accordance with AS 38.05.825 and under the Submerged Lands Act of 1953, and the Equal Footing Doctrine.

The public is invited to comment on this PD. **The deadline for comments to be received is on or before August 10th, 2015.** 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 Statute (AS) and Alaska Administrative Code (AAC), specifically 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 ADL 232192, which includes, but is not limited to the following: the Prince William Sound Area Plan and the Alaska Department of Environmental Conservation Contaminated Sites Map for the State of Alaska.

IV. SCOPE OF THE DECISION

The scope of this DNR decision is limited to the determination of whether it is appropriate to convey the aforementioned state owned tideland selections or a portion of these selections to the city. For those areas that may be conveyed to the city subsequent to this decision, the decision additionally includes the determination of third party interests, stipulations necessary to effectuate this decision, whether the requirements of AS 38.05.825 apply and are met, and whether it is appropriate for the City of Cordova to exercise immediate management authority for conditional leases and conditional sales.

V. DESCRIPTION

A. Location and Geographical Features

Geographic: South-Central Alaska, Orca Inlet
 Borough/Municipality: City of Cordova, Alaska
 Meridian: Copper River (CR)
 Regional Native Corp.: Chugach Alaska Corporation
 Native Village Corp.: Eyak Village, Tatitlek Village, Chenega Village
 USGS Map Coverage: Cordova Quadrangle, Map C-5 (1:63360)

B. Legal Description - Land Status - Third Party Interests

TABLE 1 below identifies the City of Cordova tideland selections by Meridian, Township, Range, Section, title status and third party interests, if any. The State of Alaska holds fee title to the mineral estate through the Statehood Act of 1958 and the tidelands through the Submerged Lands Act of 1953.

TABLE 1

LEGAL DESCRIPTION – LAND STATUS – THIRD PARTY INTEREST

CORDOVA REQUESTED TIDELANDS AREA (Map 2)

S T15S, R03W, Section 21

S T15S, R03W, Section 28

Survey	Date	State Selection
MTP Suppl. Sections 21, 22, 27, 28	February 2, 2012	Submerged Lands Act 1953 Equal Footing Doctrine
Third Party Interest: YES		

Surface

- ADL 228110: Private Easement, John Harvill
- ADL 231918: DMLW Permit, Tidelands Application Received, Alaska Marine Resources LLC
- ADL 231942: Private Easement, Non-Exclusive ROW, Trident Seafoods
- ADL 231896: Private Easement, Non-Exclusive ROW, Alaska Wildlife Seafoods LLC

VI. PRELIMINARY DECISION

A. Background

The City of Cordova is a home rule city that incorporated in 1909. Cordova's small boat harbor is an imperative part of everyday life in the city, providing not only transportation needs, but also allowing the city to build its economic base. The small boat harbor has a capacity of 727 vessels, making it one of Alaska's largest harbors.

When Cordova constructed its most recent harbor expansion, a small portion of it (approximately 5 acres) encroached onto state owned tidelands. In order to bring this encroachment area into compliance, it was necessary for the City of Cordova to apply for conveyance of the underlying tidelands.

B. Planning, Classification, Mineral Orders and Local Planning

1. Planning

The Prince William Sound Area Plan (PWSAP) provides both general management direction and specific management direction for management unit 27A, which contains the tideland areas selected by the City of Cordova. The tideland area subject to this application has a Public Recreation designation and has no prohibited surface uses. The City of Cordova has indicated that if the requested tidelands are conveyed to the city, they would be zoned in either the Waterfront Commercial Park District or the Waterfront Industrial District (City of Cordova Resolution 05-15-23).

2. Classification

The PWSAP classifies the City of Cordova's tide and submerged land selection as Public Recreation.

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 Cordova has a local comprehensive plan, including zoning ordinances. The City of Cordova created their first comprehensive plan in 1995 and revised it in 2008 to address significant changes that have occurred since the original plan. Cordova is a growing community with an evolving economy.

In its comprehensive plan, the City of Cordova specifically acknowledges the need to acquire the selected lands. “The industrial district area lacks room for large scale expansion and additional industry lands will be needed in the near future.”

C. Access

Cordova already owns the tidelands containing the harbor entrance and successfully ensured access to and from the harbor and navigable waters using public roads in the decision for ADL 216240, signed on 09/06/1995. The requested tidelands are also far enough away from Spike Island to ensure access on all sides.

The City of Cordova 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 navigability determination by the state and federal government determined all tidal waters within Orca Inlet, including those tidelands selected by the City of Cordova proposed for conveyance are considered navigable under the Submerged Land Act 1953.

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 adjacent both landward and seaward to the mean high water mark should not be imposed along the requested tidelands. The along easement at this location is below the low water mark and therefore is only accessible by boat.

Additionally, DNR has determined that the ‘*to*’ easement was accomplished in the decision for ADL 216240, completed in 1995, in which Cordova gained ownership of the uplands and adjacent tidelands, and provided adequate access to those areas.

D. Reservation of Mineral Estate

Conveyance of a 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. Any exploration or development that occurs must be consistent with AS 38.05.130 and other applicable statutes and regulations.

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 (DEC) list of Contaminated Sites in Alaska, no hazardous material or contamination from hazardous material is known at this time to affect this tideland selection. The environmental risk associated with this proposed conveyance should be minimal or non-existent.

It is up to the City of Cordova 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 of Alaska 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.

F. Survey

A survey determination may be requested by the city at any time subsequent to the Final Finding and Decision (FFD). An approved survey will be required prior to issuance of a conveyance document. If no approved survey exists, then one must be performed by an Alaska Registered Land Surveyor under direction of the DNR Survey Section. The city 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.

G. Conditional Leases and Permits

The City of Cordova will receive management authority, under AS 38.05.825, when the tidelands have been approved, if and when the FFD becomes effective. The city may lease the approved tideland area, but may not sell it, pursuant to AS 38.05.825(c). Additionally, the city may not lease the approved or conveyed tidelands to shore fisheries, pursuant to AS 38.05.825(d).

H. Unauthorized Use

DNR has not physically inspected the city's tideland selection for the presence of unauthorized use, but it has reviewed department records and is aware of one existing unauthorized use. There is a vessel on the outside of the breakwater in Cordova called the Polar Bear. This boat is currently unauthorized for long term mooring on state tidelands and will likely still be unauthorized if and when Cordova gains ownership over the subject tidelands. However, the Polar Bear's owners have submitted an application for a state permit, which has not been issued. Therefore, if and when this decision is finalized, the application that the owners submitted would be terminated. It would then be the City of Cordova's responsibility to deal with this unauthorized use. The City is expected to and has been given the opportunity to inspect its tideland 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 and when the FFD becomes effective, unless specified differently. State applications requesting a lease or permit that have not been adjudicated or issued will be closed.

There is one current tideland permit application at this time which was submitted by Alaska Marine Resources, LLC.

J. Archaeological Resources

The Alaska State Historical Preservation Office (SHPO) maintains the Alaska Heritage Resources Survey (AHRS) 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 for an Agency Review is to solicit comments from agencies that may be affected and have a strong interest in the city's tideland selections. Agencies were given the opportunity to evaluate the selections, determine if the state's interest outweighs that of the city, and if so, provide comments and evidence supporting their recommendation to retain the selections in state ownership. Additionally, the agencies were requested to identify any stipulations that would be appropriate and necessary to impose on the tidelands, if approved for conveyance. Four state agencies submitted comments to DNR, the Alaska Department of Fish and Game, the Alaska Department of Transportation and Public Facilities, DNR Division of Geological and Geophysical Surveys, and DNR Division of Parks and Outdoor Recreation, State Historic Preservation Office.

L. State Agency Comments and DNR responses

1. Comments from Alaska Department of Fish and Game (ADF&G):

The Alaska Department of Fish and Game reviewed the proposed tideland conveyance to the City of Cordova for a portion of the Cordova Harbor. We have no objections.

DNR Response: Acknowledged.

2. Comments from the Department of Transportation and Public Facilities (DOTPF):

DOTPF has no objection to transferring these state tidelands to the City of Cordova. The Department of Transportation and Public Facilities sold its personal property interests in the Cordova Harbor to the City of Cordova on September 15, 2003. The city has owned and operated the harbor ever since.

DNR Response: Acknowledged.

3. Comments from the Division of Geological and Geophysical Surveys (DGGS):

The tidelands in question appear to be underlain by sedimentary rocks of the Orca Group; the host for copper mineralization at the Cordova Copper prospect on the north flank of Mt. Eyak is mixed basalt and sedimentary rocks which do not appear to extend into the vicinity. Based on the existing data, there appears to be minimal potential for metallic mineral resource on the tidelands area in question and DGGS has no minerals-related work planned in the area. From a mineral resources perspective, there is no need for the State's retention of the described area of tide and submerged lands or for any stipulations on conveyance of the requested area to the municipality.

The tidelands under consideration are subject to the same potential geologic hazards as the adjacent tidelands already belonging to the City of Cordova and should be developed with the same considerations and best practices with regard to potential earthquakes, tsunami inundation, and subaerial land sliding of submerged sediments in the area south of the breakwater.

DNR Response: Acknowledged.

4. Comments from the Alaska State Historic Preservation Office (SHPO) / Office of History and Archaeology (OHA):

OHA/SHPO has no comments or objections regarding the subject project.

DNR Response: Acknowledged.

VII. DISCUSSION AND ALTERNATIVES

A. Discussion

The City of Cordova's harbor currently encroaches onto State-owned tidelands. Improvements located on the tidelands encroachment include portions of the docks and approximately 1,500 linear feet of breakwater. This selection of tidelands by the City of Cordova as part of this decision not only resolves this encroachment issue, but also allows for future harbor expansion, land management, and potential waterfront development.

The city has a growing seafood industry and would like to expand its ability to accommodate this industry. Several private entities have expressed the desire to expand their current facilities or to locate in Cordova; however, there are few waterfront areas that the city owns available for development. This conveyance would prove valuable economically to not only the City of Cordova, but the State of Alaska as well.

During the agency review process there were no stipulations, concerns or objections received regarding the proposed conveyance for these tidelands.

The '*along*' easement will not be imposed since an access easement is inappropriate at this location because it is below the low water mark and is only accessible by boat. The '*to*' easement will also not be imposed since public access to the tidelands is already provided in the decision for ADL 216240.

Management authority over the subject tidelands will be transferred to the City of Cordova once the Final Finding and Decision is written and becomes effective.

B. Alternatives

The following alternatives exist:

1. Take no action to approve, reject or postpone the tide and submerged land selection by the City of Cordova. This alternative would, in effect, preclude the city's ownership of the tideland considered to be important for their community development and access. This action would be inconsistent with the purpose of 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.
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 tideland outweighs the public interest in retaining state ownership.

VIII. RECOMMENDATIONS

A. Recommended alternative

DNR has determined that Alternative 3 is the preferred action and is concurrent with the intent and requirements of AS 38.05.825. The tide and submerged land selection by the City of Cordova is approved for conveyance, subject to the recommended 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 and when the Final Finding and Decision 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 Cordova if and when the FFD is effective.
2. Management authority for the approved tidelands will be transferred to the City of Cordova if and 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 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.

C. Conveyance document to include following:

The approved Tideland conveyance to the City of Cordova 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.
4. ADL 231896: Private Easement, Non-Exclusive ROW, Alaska Wildlife Seafoods, LLC
5. ADL 231942: Private Easement, Non-Exclusive ROW, Trident Seafoods

D. Recommended action on tideland selection

The acreage in TABLE A is the protracted acreage and the final acreage will be determined at the time of survey.

**TABLE A
 TIDE AND SUBMERGED LAND PROPOSED FOR CONVEYANCE**

Map #	MTRS	Legal / Plat	Acreage
Map 2	CRM, T015S, R003W Section 21: W1/2SE1/4SW1/4 Section 28: W1/2E1/2NW1/4, NW1/4NE1/4SW1/4	MTP Surveyed Township 15S, Range 3W, CRM, Suppl Secs 21, 22, 27, 28	50
TOTAL ACRES:			50

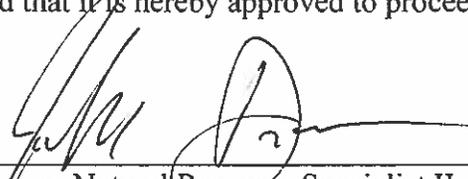
IX. FINDING

The following are findings of this Preliminary Decision:

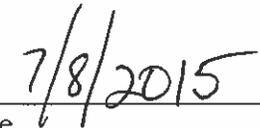
1. That it is appropriate to convey approximately 50 acres of state-owned tide and submerged lands to the City of Cordova pursuant to AS 38.05.825.
2. That this best interest finding has determined the interests of the state in retaining these tide and submerged lands does not outweigh the interests of the City of Cordova in obtaining the tideland selections.
3. That conveyance of the proposed tidelands would resolve the encroachment issue for that portion of the Cordova small boat harbor.
4. That the proposed use of this acreage to expand the small boat harbor and create the potential for waterfront development is consistent with management unit 27A; plan designation and management intent.
5. That the imposition of an ‘along’ easement under AS 38.05.127 is inappropriate on the subject tidelands because the tidelands are located below the low water mark and therefore access can only be gained using a boat or similar vessel.
6. That the imposition of a ‘to’ easement under AS 38.05.127 is unnecessary since DNR has determined that proper public access to the water body has already been provided by the City of Cordova in the decision for ADL 216240, signed in 1995.

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, 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.



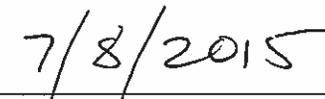
John Dwyer, Natural Resource Specialist II
Municipal Entitlements



Date



Nina Brudie, Manger
Municipal Entitlements



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 Cordova. Comments may be provided in written form to the Division of Mining, Land and Water, Resource Assessment and Development Section, Municipal Entitlement Unit, Attention John Dwyer, adjudicator at 550 West 7th Avenue, Suite 1050, Anchorage, Alaska 99501-3579; by fax: (907) 269-8915 or by electronic mail to john.dwyer@alaska.com **on or before August 10th, 2015** in order to ensure consideration.

The postmaster in the Cordova will be requested to post the public notice per AS 38.05.945. 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 Cordova, Chugach Alaska Corporation, Tatitlek Village Corporation, and Eyak Village Corporation, and Chenega Village Corporation.

Following the Preliminary Decision (PD) comment deadline, those written responses received will be considered and this PD may be modified to incorporate the 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 the appeal instructions paragraph. Please direct all inquiries or questions to John by phone at (907) 269-8531 or 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 TTY: (907) 269-8411.

ATTACHMENTS AS PART OF THIS DECISION

MAP 1 Vicinity Map

MAP 2 Cordova Requested Tidelands Area