

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

**PRELIMINARY DECISION
CONVEYANCE OF LAND UNDER AS 29.65.010(14) AND AS 38.05.810(a)**

CITY AND BOROUGH OF WRANGELL MUNICIPAL LAND ENTITLEMENT SELECTIONS ALASKA DIVISION OF LANDS (ADL): ADL 108133
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I. PROPOSED ACTION

The Department of Natural Resources (DNR) *proposes to convey* a total of approximately 1,293 acres (TABLE 4) consisting of 973 acres of state owned vacant, unappropriated, unreserved (VUU)¹ general grant land to the City and Borough of Wrangell (CBW or borough) to fulfill, in part, their remaining entitlement granted of 9,006 acres under AS 29.65.010(14). DNR also *proposes to convey* 320 acres under AS 38.05.810(a)² and if found appropriate, waive the reverter interest requirement under AS 38.05.810(g). These approved lands shall all be credited towards fulfillment of the CBW municipal entitlement pursuant to AS 29.65.100(c).

This Preliminary Decision (PD or decision) covers 1,651.78 acres of borough land selections identified as Earl West Cove (Map 1), Thoms Place (Map 2), and St John Harbor (Map 3). These areas are in part of the Central/Southern Southeast Area Plan³ (CSSEAP) located within Region 4: Wrangell. The attached maps, as part of this decision, and depict the general location of the City and Borough of Wrangell (CBW or borough) land selections.

DNR also *proposes to reject* a portion of the CBW land selections for a total of approximately 358.78 acres (TABLE 5). Those selections in the northernmost of the two selected areas in Earl West Cove (Map 1) consists of 4 government lots consisting of 78.78 acres and a 40 acre parcel that are impacted by the Department of Transportation and Public Facilities right-of-way easement for Forest Service Road No. 6265 with a corridor of 300-feet in width. This corridor uses the areas of level terrain in the central part of the selection leaving undevelopable hillside uplands. DNR also *proposes to reject* 240 acres in the southernmost area in Earl West Cove where this area is part of the Southeast State Forest and has been determined to be essential to its operations.

¹ *Vacant, unappropriated, unreserved* (VUU) land is general grant land patent or tentative 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.

² This authority was used to include a portion of the St John Harbor (Map 3) area that the borough did not initially select. DNR used AS 38.05.810(a) as the authority for conveyance to the CBW since the time period for selections under AS 29.65 had expired. This statute does not have the same time constraint for selection, but conveyance of land under this authority is credited towards the borough's entitlement.

³ *Central/Southern Southeast Area Plan* (2000) establishes the management intent, land-use designations, and management guidelines that apply to all state lands in applicable planning area. This plan forms the basis for the land use classifications that are to determine if state land is appropriate for conveyance to a municipality under the means of AS 29.65.

This decision determines whether or not the CBW municipal entitlement land selections meet the requirements in accordance with AS 29.65.070(c). This statute requires that each land selection must be compact in form with its length not exceeding approximately four times its width. The acreage approved for conveyance under AS 29.65 and AS 38.05.810(a) will be credited towards partial fulfillment of the borough's municipal land entitlement. Management authority will be transferred once the Final Finding and Decision (FFD) become effective. This decision also determines if it is appropriate to waive the reverter interest requirement under AS 38.05.810(g) for that acreage to be conveyed under AS 38.05.810(a).

The public is invited to comment on this Preliminary Decision. The deadline for comments **must be received by or on March 23, 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 actions for this Preliminary Decision is authorized pursuant to the Alaska State Statutes (AS) together with the Alaska Administration Code (AAC) particularly to AS 29.65, AS 38.05.035(e), AS 38.05.125, AS 38.05.127, AS 19.10.010 and 11 AAC 55. The adjudication of the 320 acres in Section 4, T. 63 S., R. 80 E., CRM of the St. John Harbor selection occurs under AS 38.05.810(a); the authority to waive the revisionary interest occurs under AS 38.05.810(g). CBW land selections within the Southeast State Forest are authorized under the authority of AS 41.17.500(f): Nothing in this section prevents the City and Borough of Wrangell from exercising its land selection rights under AS 29.65.500(d) to state lands within its boundaries.

III. ADMINISTRATION RECORD

The administrative record for this Preliminary Decision is known as case file ADL 108133, which includes, in addition to other relevant information: the Central/Southern Southeast Area Plan, the Alaska Department of Fish and Game Alaska Anadromous Waters Catalog, the Atlas to the Catalog and the Alaska Department of Environmental Conservation Contaminated Sites Map for the State of Alaska, the Alaska Southeast Transportation Plan, and the reciprocal easement documents.

IV. SCOPE OF DECISION

The scope of this DNR review is limited to the determination of whether it is found appropriate to convey the aforementioned borough land selections or a portion of these selections to the borough. It additionally includes the determination of third party interests, stipulations necessary to effectuate this decision, and whether the requirements of AS 29.65.070(c) apply and are met and it is appropriate to allow the CBW to exercise immediate management authority for conditional sales and leases. The scope also includes consideration of the reverter interest requirement under AS 38.05.810(g).

V. DESCRIPTION

A. Location and Geographical Features

Geographical Area(s): Central/Southern Southeast Area Plan (CSSEAP):

Region 4: Wrangell

Wrangell – North/Central Islands: areas near coast are characterized by moderately sloping coastal plains. Uplands contain a mixed hemlock/spruce forest except for some even-age regeneration areas in the Pat's creek drainage.

Wrangell Island South Area: consist of interior areas by Thoms Lake and Thoms Creek drainage, with terrain tending to be gentle sloped near the creek but more steeply sloped away from the area; includes dry uplands covered with mixed spruce hemlock forest.

Borough/Municipality: City and Borough of Wrangell
Meridian: Copper River (CRM)
Regional Native Corp.: Wrangell Cooperative Association
Village Corp.: Metlakat
USGS Map Coverage: USGA Topo Maps (1:63,360)

Map Number	Municipal Entitlement Selection Name	USGS
1	Earl West Cove	Petersburg B-1
2	Thoms Place	Petersburg A-1
3	St John Harbor	Petersburg B-3

B. Legal Description - Land Status - Third Party Interests

TABLE 1 below identifies the CBW land selections by map number, parcel area name, Meridian: Copper River (CRM), Township (T), Range (R), Sections (S), and includes title status, date, state case file and any third party interest affecting those lands owned by the state. The state holds fee title to the land and mineral estates through either Patent or Tentative Approval (TA) received from the Bureau of Land Management (BLM). The state will only convey the land estate on those approved lands to the borough, and will retain the mineral estate in state ownership.

TABLE 1

LEGAL DESCRIPTION – LAND STATUS – THIRD PARTY INTEREST

MAP 1

EARL WEST COVE

T. 64 S., R. 85 E., Sections 2, 3, and 10, CRM

T. 63 S., R. 85 E., Section 35, (Lots 1, 2, 3 & 4) CRM

TITLE	DATE	STATE CASE FILE
BLM Patent: 50-2004-0026	10/27/2003	NFCG 287

MAP 3

THOMS PLACE

T. 65 S., R. 86 E., Section 31, CRM

TITLE	DATES	TITLE ACQUISITION
BLM TA: AA-71641	5/29/2003	NFCG 285
Third Party Interest: YES		
<ul style="list-style-type: none"> Reserved to the United States, a sixty-six (66) feet wide, Forest Development Road No. 6299 (Thoms Creek Road), located within Section 31, T. 65 S., R. 86 E., CRM. 		

MAP 3

ST. JOHN HARBOR

T. 62 S., R. 86 E., Sections 33 & 34, CRM

TITLE	DATE	STATE CASE FILE
BLM Patent: 50-2004-0365	8/19/2004	NFCG 227

VI. PRELIMINARY DECISION

A. Background

The former City of Wrangell (city) was authorized to receive 551 acres of municipal land entitlement. The state conveyed 262.06 acres in 1996 and 288.728 acres in 1998 under AS 29.65.020 to fulfill the municipal land entitlement of the City of Wrangell. Later, the city was dissolved and reconstituted as the City and Borough of Wrangell (CBW), a unified home-rule municipality authorized through a certification of incorporation by the State of Alaska Department of Commerce, Community and Economic Development, effective May 30, 2008. This action entailed the expansion of the new corporate boundary in 2008 to encompass a much larger area than that of the former city.

Thereafter, in 2010, with the new CBW expanded boundary, the legislature passed CSHB 273 establishing a new general grant land entitlement of 9,006 acres and revised AS 29.65.010 to reflect this action (AS 29.65.010(14)). A recent FFD dated July 8, 2014, approved for conveyance 7,384.39 acres to the CBW and rejected 1,922.96 acres. This action left a remaining entitlement of 1,621.61 acres reduced by previous conveyed acreage of 551 to the City of Wrangell for a remainder of 1,070.61 acres. This decision deals with the remaining entitlement

and *proposes to convey* approximately 973 acres (TABLE 5) of state owned VUU general grant land to the CBW under AS 29.65.010(14), and *proposes to convey* 320 acres under AS 38.05.810(a), and the proposed land transferred shall be credited towards fulfillment of their land entitlement pursuant to AS 29.65.100(c) to fulfill this remaining CBW land entitlement, and if found appropriate, waive the reverter interest requirement under AS 38.05.810(g).

B. Planning

1. Planning

These CBW land selections are situated within the planning boundary of the state's CSSEAP and are affected by the classifications derived from this area plan. These selections are located in Region 4: Wrangell (Cpt. 3, Pg. 169 of 328). TABLE 2 identifies the land use classification for each selection. The management intent and plan designation for each management unit are described in the CSSEAP. These plan designations convert to land use classifications, which establish what land the state may convey under the Municipal Entitlement Act. The management intent and management guidance of the plan also affect the DNR decision as to which land to convey and the type of stipulations that apply to a disposal of state land.

2. Classification

The land selections in this decision are classified as Resource Management, Settlement or both. These classifications are conveyable as municipal entitlement general grant land as vacant, unappropriated, unreserved land (VUU) under AS 29.65.130(10). TABLE 2 identifies the management unit and the land use classification: Resource Management (RMG) and Settlement (STL) that derived from the CSSEAP pertaining to the boroughs' land selections.

3. Southeast State Forest

A portion of the CBW land selections in this decision are within the Southeast State Forest (SESF). A city or borough (municipality) is not typically allowed to select sites in a State Forest as it is special purpose site and not general domain land, and therefore it is not VUU land. In 2011, however, a legislative action (HB105/SB44) authorized the CBW to select State Forest land located within their corporate boundary, providing it was VUU land prior to the designation of the SESF. AS 41.17.500(d) & (e)(5) allows the CBW to select land within the SESF and obtain it through adjudication of the borough's municipal entitlement. This authorization affects state land in the St. John Harbor area (Map 3) on Zarembo Island (Map 3) and state land in Earl West Cove (Map 1). In this instance this decision authorizes the conveyance of this land to the CBW in the St. John Harbor area. The Division of Forestry (DOF), who administers the SESF, determined that St. John Harbor area was not essential to their operations and could be conveyed subject to best interest findings in this decision. It also authorizes the selection of land in the Earl West Cove area. It also evaluates the selection of land in Earl West Cove (Map 1). In this instance, DOF determined that the land was essential to their operations and should not be conveyed.

TABLE 2

MANAGEMENT UNIT AND CLASSIFICATION

MAP # PARCEL NAME	TOWNSHIP, RANGE, CRM	MANAGEMENT UNIT	LAND USE CLASSIFICATION
1 Earl West Cove	T. 63 S., R. 85 E.	W-12	Resource Management
	T. 64 S., R. 85 E.	W-12	Resource Management Settlement
2 Thoms Place	T. 65 S., R. 86 E.	W-14	Settlement
3 St. John Harbor	T. 62 S., R. 80 E.	W-02	Resource Management Settlement

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 borough's land selections at this time.

C. Traditional Use Finding

In an unorganized borough, disposal of state land with traditional uses is to be reviewed under AS 38.05.830. The CBW is a unified home-rule municipality and was eligible for new municipal entitlement in accordance with the 2010 revised AS 29.65.010; therefore, a determination for traditional uses is not required. The CBW municipal entitlement land selections in this decision are located within their approved expanded corporate boundary.

D. Access

Public access will be reserved in accordance with AS 19.10.010, AS 19.30.400, AS 38.05.125, AS 38.05.127, and 11 AAC 51. The CBW municipal entitlement land selections are located within Region 4: Wrangell and access is typically by water and this region can be accessed by either boat or floatplane.

1. Section Line Easements

A section line easement (SLE) is to be provided in accordance with AS 19.10.010 and 11 AAC 51.025, which require a 100-foot wide public easement centered on the section line or 50-feet on each side of a surveyed or unsurveyed section line. This easement will be reserved along each section line on lands approved for conveyance.

2. Trails, Rights-of-way, RS 2477 and Easements

A review of state records concluded that there is a rights-of-way easement reservation and exceptions in the U.S. Patent affecting the CBW land selection to be conveyed.

Subject to:

- Reserved to the United States, a sixty-six (66) feet wide, Forest Development Road No. 6299 (Thoms Creek Road), located within Section 31, T. 65 S., R. 86 E., CRM.

3. Navigable and Public Water

AS 38.05.127 and 11 AAC 51.045 require the imposition of a continuous ‘along’ easement that extends 50-feet wide upland of and adjoining the ordinary high water mark (OHWM) on navigable and public waters and the mean high water mark (MHWM) on marine meandering shorelines. The ‘to’ easement will be imposed through the section line easement in accordance with AS 19.10.010 and 11 AAC 51.

Navigable and public waters have been determined based on the criteria in 11 AAC 51.035 and as further defined as follows:

- *Navigable water:* water body at least 50 acres in size or a waterway at least 50-feet in width from the OHWM to the OHWM. The state will retain the bed of navigable water in state ownership, including all gravel bars and islands.
- *Public water:* a water body at least 10 acres but less than 50 acres in size or a waterway at least 10-feet but less than 50-feet in width from the OHWM to the OHWM. The state will convey the bed of public water to the municipality.

The location of the OHWM and the MHWM will be determined at the time of survey, which will identify the specific areas to be retained by the state. Prior to transferring ownership, a survey is required on the unsurveyed approved lands by an Alaska Professional Licensed Surveyor hired by the CBW. At the time of survey, the field work performed by the surveyor may determine that a body of water or waterway appears to be different than as identified in this decision. If this is correct, the surveyor will be required to submit their findings to the state’s surveyor for review and by the municipal entitlement unit. If the field work is determined to be accurate by these entities the survey findings will supersede the recommendations in this decision for those waterbodies affected by this determination.

For those lands approved for conveyance to the CBW, ownership of those uplands from the OHWM of navigable and public waters, MHWM of marine meandering shorelines, does not

grant an exclusive right to the use of the water and a right of title to the land below the OHWM or MHWM, pursuant to AS 38.05.126.

4. To & Along Easements

A continuous 50-foot wide public access easement upland and ‘along’ the OHWM (Map 2-Thoms Place-Thoms Creek) and the MHWM (Map 3-St. John Harbor) will be reserved on all body of waters determined to be navigable or public waters in accordance with 11 AAC 51.045 and AS 38.05.127. TABLES 3 and 4 identify the waterbody that is affected by this requirement.

A fifty (50) feet wide easement ‘to’ navigable and public waters will be reserved approximately once each mile on each side of a section line. For the purpose of this decision, it is typical that the section line easements required under AS 19.10.010 will function to fulfill this requirement.

These stipulations will be imposed as a ‘subject to’ in this decision on those lands approved for conveyance to the CBW.

5. Protection of Riparian Areas to Anadromous and Public Waters

The CSSEAP includes guidelines for the maintenance of riparian habitat adjacent to anadromous and high-value resident fish waters. Lands conveyed out of state ownership are to include stipulations to ensure the protection of riparian areas. The plan establishes the width of riparian buffers and provides flexibility in the method used to protect these areas. The preferred method used in this decision is through an easement that precludes certain uses and sets limits on de-vegetation within a specific area.

TABLE 3 identifies whether an ‘along’ under AS 38.05.127 or a riparian easement (or both) will be imposed, and the width of the easement for affected waterbodies.

The stipulation described below affects those streams identified as anadromous in TABLES 3 and 4. This stipulation will be imposed as a “subject to” in this decision.

Subject to:

Reservation for an easement of 100-feet wide to be located upland and adjoining the ordinary high water mark of (*See Tables 3 & 4 for waterbody name*), the purpose of which is to protect the riparian area of the aforementioned waterbody. Only water dependent uses of the type described in [former] 6 AAC 80.900(17) are allowed within the first 70 feet from ordinary high water mark. No more than 25% of this area may be de-vegetated and no more than 50% may be de-vegetated in areas in excess of 70 feet. All such uses are subject to the requirements of the ‘along’ easement imposed under AS 38.05.127.

NAVIGABLE WATERS

Waterbodies determined to be navigable waters under 11 AAC 51.035(b) and (c)(1) are identified in TABLE 3. No navigable waters or the beds (underlying land) of a navigable water body or anadromous streams are conveyed. Exposed sand or gravel bars that are in and are not above the OHWM are part of the water body bed. Only those lands determined to be uplands that are above the OHWM will be conveyed.

TABLE 3

Map # Parcel Name	Township, Range, & Section, CRM	Water Body Name greater > than or less < than in width <10-feet Not > 50-feet	Anadromous Waters Catalog #	Riparian Area Width upland from each side of the OHWM	Public Access Easement Width (to & along)
Thoms Place	T. 65 S., R. 80 E., Section 31	Thoms Creek with a tideland influence	Yes AWC#107-30-1030-0	100-feet	50-feet

PUBLIC WATERS

Waterbodies determined to be public waters under 11 AAC 51.035 are identified in TABLE 4. These waterbodies may or may not be anadromous and are identified in the Department of Fish and Game Alaska Anadromous Waters Catalog. The beds of public waters are to be conveyed with the adjoining approved lands. It also imposes an 'along' easement of 50-feet upland of the OHWM. The state will retain the beds including all the islands and gravel bars within those anadromous streams from the OHWM to the OHWM. Only those lands determined to be uplands that are above the OHWM will be conveyed.

TABLE 4

Map # Parcel Name	Township, Range, & Section, CRM	Water Body Name greater > than or less < than in width <10-feet Not > 50-feet	Anadromous Waters Catalog #	Riparian Area Width upland from each side of the OHWM	Public Access Easement Width (to & along)	Public Access Easement Shorelines Width (along meandering marine waters)
#3 St. John Harbor	T. 62 S., R. 80 E., Section 34	unnamed stream	Yes AWC# 108-30-1015-0	100-feet	50-feet	-
#3 St. John Harbor	T. 62 S., R. 80 E., Section 34	Sumner Strait Marine Shoreline	-	-	-	50-feet

E. Reservation of Mineral Estate

A conveyance of VUU general grant land to a municipality under AS 29.65 conveys no interest in the mineral estate. All mineral related permits, licenses, claims and leases affecting the land 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. Exploration and development, if any, which could occur, would be consistent with AS 38.05.130 and other applicable statutes and regulations.

F. 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 land being proposed for disposal. Based on review of the Alaska Department of Environmental Conservation's list of Contaminated Sites and comments received, no hazardous material or contamination from hazardous material is known at this time to affect these selections.

The CBW is expected to inspect these selections and familiarize itself with regards to the condition and quality of the land. 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 land proposed for conveyance. The state assumes no liability for 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.

G. Survey

A survey determination may be requested by the CBW at any time subsequent to the 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 CBW will be responsible for the expense of any survey. There is no requirement under AS 29.65.070 to appraise the land prior to conveyance.

H. Conditional Leases and Sales

The borough will receive management authority and equitable title to all land approved for conveyance by this PD once the FFD is effective. This will allow the CBW to approve conditional leases and make conditional sales pursuant to AS 29.65.070(b), but not to dispose of land approved for conveyance until the land has been surveyed and ownership transferred to the borough.

I. Unauthorized Use

DNR has not physically inspected all areas of the municipalities land selections adjudicated herein for the presence of unauthorized use, but it has reviewed department records and is unaware of any existing unauthorized use. The borough is expected to, and has been given the opportunity to inspect its land selections to familiarize itself with the condition and quality of the land.

J. Disposition of Leases, Permits and Applications

Administration of active leases, permits, and easements in the surface estate issued by on land to be conveyed will be transferred to the borough 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.

K. 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. The borough officials indicated that they are aware of the presence of the cultural sites and the need, once these lands are conveyed, to take those actions required by law to protect the sites in accordance with AS 41.35.070(d).

L. Form and Width Requirement

Each municipal entitlement land selection is required, to be compact in form with its length not exceeding approximately four times its width pursuant to AS 29.65.070(c). Review of the borough's land selections proposed for conveyance in this decision indicates that the selections are consistent with this statute.

M. Agency Review

The intent of an agency review is to request comments from agencies that may be affected by a municipal entitlement land 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.

N. Revisionary Interest

In accordance to AS 38.05.810, a municipality receiving state land, the "commissioner shall retain a revisionary interest on each sale or other disposal granted" under AS 38.05.810(a) or (e). The "commissioner may waive the revisionary interest (AS 38.05.810(g)) on a written determination that the waiver is in the public interest. DNR has determined in this decision that

the selection would be in the interest of the public for the CBW to retain and waive states' revisionary interest. The intent in conveying the land affected by the revisionary interest is to manage it as municipal land, similar to other selections that are conveyed under AS 29.65.010. Land conveyed under AS 29.65 do not contain reverter clause.

O. State Agency Comments and DNR responses

1. Alaska Department of Transportation and Public Facilities (ADOT&PF)

We have an interest in reservation of a regional road corridor through the two Earl West Cove land selections as shown on Map 1. The road corridor ends at "The Narrows" at a proposed bridge crossing to the Section 4407 easement connecting to the Bradfield Canal corridor.

DNR Response: DNR recognizes that the CBW land selection conflicts with a planned transportation route and acknowledges the states' needs to preserve this area for future projects. The state's need to preserve areas of future rights-of-way for roads and the states' interest outweighs the interest of the CBW in obtaining the land selections in Earl West Cove (Map 1). These lands selections will be retained by the state.

Regional transportation routes are identified in "Essential State Transportation and Utility Corridors" in the Southeast Alaska Transportation Plan that can be viewed at: <http://dot.alaska.gov/sereg/projects/satp/2004plan.shtml>. DNR acknowledges the planned route going through T. 64 S., R85 E., Section 10 in the NE¼, Section 3 in the SE¼S½, Section 2 in the NW¼NE¼ and on up through Government Lots 1 thru 4 in T. 63 S., R. 85 E., known as the Wrangell – Fools Inlet to Eastern Passage route, and rejects both selections. The state's interest in remaining this land outweighs that of the borough in obtaining it.

2. Office of History and Archaeology (SHPO)

The Office of History and Archaeology has reviewed the subject municipal entitlement (received 12/3/14) for conflicts with cultural resources pursuant to AS 41.35.070 of the Alaska Historic Preservation Act.

The Alaska Heritage Resources Survey (AHRs) indicates that there are no recorded cultural resource sites within the identified parcels, although the general vicinity of the selections is considered high potential. Please note that only a very small portion of the state has been surveyed for cultural resources and therefore, the possibility remains that previously unidentified cultural resources may be located within the selected parcels.

The entitlement itself will have no direct effects to cultural resources. Future projects that may be proposed by the City and Borough of Wrangell on the land selected could affect previously unidentified cultural resources. Our office recommends that the City and Borough of Wrangell be notified of the potential for impacts to these resources if there are improvements on the land in the future. As such, our office will have the opportunity to review potential impacts to cultural resources, pursuant to the Alaska Historic Preservation Act (AS 41.35) and the National

Historic Preservation Act (16 U.S.C. 470), if there is state or federal involvement for future projects on the selected parcels.

DNR Response: Any lands approved for conveyance will be subject to a notification stipulation contacting the SHPO to protect the public interest in archaeological resources. The CBW proposed approved parcel in Thoms Place will be subject to the following:

Subject to:

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.

3. Public Access Assertion & Defense Unit

Thoms Creek (Map 2): Based on the aerial photography available through SDMI Best Data Layer from GINA and by the configuration of the stream it looks like it is tidal influence to very near the boundary of Section 31. By using the measuring tool in ArcGIS the stream measures from a low of 45-feet to a high of 55-feet; with an average of right about 50-feet. Based on the available information I recommend determining this water body navigable under 11 AAC 51.035(b) and (c)(1) due to its status as an anadromous stream.

DNR Response: The land selection proposed for conveyance (Map 2: Thoms Place) located in T. 65 S., R. 86 E., Section 31 the NE¼ incorporates Thoms Creek passing through the NE¼. A riparian buffer (easement) with a width of 100-feet from the ordinary high water mark on each side will be imposed as well as an ‘along’ easement, both of which have been previously described.

4. Alaska Department of Environmental Conservation (DEC)

The DEC Contaminated Sites Program Juneau Office has reviewed the attached documents and finds none of the state lands selected by CBW are listed on the Department Database of Contaminated Sites.

DNR Response: Acknowledged

5. Alaska Department of Fish and Game

The Alaska Department of Fish and Game (ADF&G) reviewed the Department of Natural Resources Agency Review notice for conveyance of 1,071 acres of state land to the City and Borough of Wrangell (CBW) to fulfil their entitlement under AS 29.65.010. All parcels proposed for conveyance are within the planning boundary of the Central/Southern Southeast Area Plan and are classified as Resource Management and/or Settlement. They include: Earl West Cove, Thoms Place, and St. John Harbor.

ADF&G has the following comments and recommendations:

1. Earl West Cove: his selection is comprised of two parcels located in Secs. 2, 3, 10, T. 64 S., R. 85 E., CRM, and Sec. 35, T. 63 S., R. 85 E., CRM. They are adjacent to existing CBW selection, and the parcel in Section 3 and 10 is part of the South East State Forest. The shoreline is important winter habitat for deer. Beaches provide easy travel during deep snow and provide food from kelp.
 - ADF&G recommends a 100-foot wide easement to provide public access to and along coast waters, and to maintain wildlife movement corridors.
 - The existing 66' ROW for Fool's Inlet Road should be reserved to maintain access to the Earl West Marine Recreation Site.

2. Thoms Place: This selection is located in Sec. 31, T. 65 S., R. 86 E., CRM. Thomas Creek (AWC# 107-30-10300) is located in the north east corner of the parcel and it is important for spawning and rearing habitat of chum. Coho, pink, and sockeye salmon, as well as, Dolly Varden, cutthroat trout, and steel head. Deer bear, and moose may also be found on the parcel.
 - ADF&G recommends the state retain a 100-foot wide riparian buffer along both sides of Thoms Creek to protect fish habitat and water quality.

3. St. John Harbor: This selection is located on Zarembo Island in Sec. 33 & 34, T. 62 S., R. 80 E., CRM. Portions of the selections, particularly along the shoreline, are high-value deer wintering habitat. Bald eagle nests may also be found along the shore. There is one unnamed stream within the parcel that is important habitat for coho salmon (AWC# 108-30-10150).
 - ADF&G recommends a 100-foot wide coastal easement to provide public access to and along coast waters, and to maintain wildlife movement corridors.
 - ADF&G recommends a 100-foot wide riparian buffer along both sides of this stream to protect fish habitat.

DNR Response: DNR concurs with ADF&G recommendations for the protection of riparian areas and the maintenance of public access, and imposes both 'along' and riparian easements with widths of 100-feet and 50-feet, respectfully. We also concur with ADF&G's recommendations pertaining to retaining state land.

6. Division of Forestry

The following comment was submitted:

"The Department of Natural Resources (DNR) is currently conducting an agency review of the proposed lands selected by the City and Borough of Wrangell as part of their general grant land municipal entitlement under AS 29.65.010(a) (14). The City and Borough of Wrangell (CBW)

submitted land selections consisting of 1,205 acres to fulfill their remaining entitlement of 1,071 acres.”

“DNR is interested in knowing whether these selections conflict with the Southeast Alaska State Forest and has requested the Division of Forestry (DOF) to conduct an assessment and evaluation to determine if the state should retain all or portions of these selections or if specific stipulations are necessary or appropriate for conveyance to the CBW.” “All recommendations for the state to retain specific lands must meet the requirements of AS 29.65.050(c) which in part states: “The director may disapprove a selection only upon a finding that the public interest in retaining state ownership of the land outweighs the municipality's interest in obtaining the land.”

Earl West Cove (240 acres)

The Division of Forestry is opposed to the selections submitted by the CBW to fulfill their municipal entitlement within Sec. 3 and 10 of T64S, R85E CRM at Earl West Cove. DOF is required by statute (AS 38.05.113) to prepare a Five Year Schedule of Timber Sales (FYSTS) every two years. The Southern Southeast Area Office will release for public comment the 2015-2019 FYSTS in January of 2015. Once listed in a five year schedule, the timber within a proposed area can be sold. Included within the 2015-2019 FYSTS are planned harvest units near Earl West Cove on Wrangell Island (see attached map). Two of those proposed units are located within the area selected by the CBW in Sec. 3 and 10 of T64S, R85E CRM. Also within that selected area are two previously harvested units that now contained pre-commercial thinned young growth timber. The proposed units and existing units cover the majority of the 240 acres selected by CBW. According to AS 41.17.200; “the primary purpose in the establishment of state forest is timber management that provides for the production, utilization and replenishment of timber resources while allowing other beneficial uses of public land and resources.” Based on past use (existing managed stands), proposed future use (2015-2019 FYSTS harvest units), location to existing infrastructure (1500-6000 feet from the Earl West Log Transfer Facility) and topographic features including steep slopes (average of 38%) and drastic elevation change (200-1200); the DOF believes that the highest and best use for the parcel is forest management and that it is in the public interest to retain this area as part of the Southeast State Forest.

St. John Harbor (690 acres)

The Division of Forestry does not agree with the St. John Harbor selections submitted by the CBW to fulfill their municipal entitlement. In July of this year, DOF in an e-mail to Bruce Phelps and Sandra Swanger-Jensen stated that DOF did not agree with the current CBW proposal for Zarembo Island and suggested that CBW take all lands remaining in the SESF on Zarembo or none. That concept is still the official view point of DOF regarding the lands to the east of St. John Harbor. AS 41.17.210 speaks to the establishment of state forest and states in part that, “the governor may propose to the legislature the establishment of state forests consisting primarily of commercially valuable forest land...” The current parcel of SESF at St. John Harbor contains approximately 1010 acres and based on the ongoing DOF timber sale is commercially valuable. DOF believes that the transfer of 690 acres to the CBW would destroy the economic viability of the remaining 320 acres. The cost to manage and operate a timber sale on such a

small tract of land on a remote island will exceed the value of the timber that the tract will produce.

DOF request that the CBW adjust their proposed selections by dropping the 240 acres of SESF lands at Earl West Cove and revising the selection at St. John Harbor to include the west half of Sec. 4 T63S, R80E CRM. When the two parcels are compared to each other; the St John Harbor parcel is lower in elevation, 100-600 feet compared to 200-1200 feet at Earl West Cove, and gentler in slope, averaging 19% at St. John Harbor compared to 38% at Earl West. Based on both elevation and slope, the St. John Harbor parcel should provide the CBW with a boarder range of uses that the Earl West Cove land.

The Division of Forestry is extremely concerned about the inherent conflict (“not in my backyard”) between timber management and residential properties (subdivisions). If adjustments to the lands selected by CBW at St. John Harbor and Earl West Cove cannot be made, then DOF requests that the following stipulation be placed on all lands conveyed; that no residential development occur on CBW lands within one half mile of any parcel of the Southeast State Forest. DOF believes that AS 38.04.005(b) which states, “In classifying and making state land available for private use and settlement purposes, the director shall consider the natural resources and conditions present on the land and shall seek to minimize the adverse effect of private settlement on wildlife, fishery, mineral, timber, and other significant resources of the land;” provides the necessary support for such a stipulation.

DNR Response: DNR concurs with DOF recommendations to reject the southernmost selection in Earl West Cove (Map 1) since it is essential component of the SESF. DNR also concurs with the DOF recommendation that the CBW acquire the land in Section 4 in St. John Harbor (Map 3), so that the state in not left with a remnant parcel it cannot manage.

VII. DISCUSSION AND ALTERNATIVES

A. Discussion

This decision approves for conveyance approximately 1,293 acres of state land, transferring management authority to the CBW when the FFD becomes affective. DNR has determined that there are no overriding interests in retaining these selections and the conveyance to the borough of these selections are consistent with the requirements of AS 29.65, AS 38.05.810(a), and management intent requirements of the Central/Southern Southeast Area Plan. Additionally the revisionary interest required under AS 38.05.810(g) is proposed to be waived. The effect of this action will make the land conveyed under the AS 38.05.810(a) to be similar to that conveyed under AS 29.65 and therefore minimize land management issues.

DNR proposes to reject 358.78 acres of the CBW selections; these areas, situated in Earl West Cove, are to be retained in state ownership. There were two main issues: (1) The need to reject the land selections in Earl West Cove to preserve state land known as the ‘Wrangell – Fools Inlet Project’ for future right-of-way, as identified in the ADOT/PF regional transportation plan 2)

The other issue concerned the SESF. It was determined that the southernmost of the two selections is essential to the operations of the SESF and requires continued state management. This decision concurs with the concerns raised by ADOT&PF and DOF and has crafted the decision to reflect these concerns. In both instances, the state's interest in retaining these lands outweighs those of the borough in obtaining them.

However, more generally, this decision determines that the majority of the municipal selections are appropriate for conveyance to the borough (Thoms Place: Map 2 & St. John Harbor Map 3). These land selections fall within a conveyable classification (RMG/Settlement), and the state's interest in retaining these land selections does not outweigh the interest of the CBW in obtaining them under AS 29.65. The standard for conveyance of state land to a municipality is pursuant to AS 29.65, but also pursuant to AS 38.05.810(a) for public and charitable use. These land selections proposed for approval meet these statutes and the conveyance of these lands are appropriate to convey. Under AS 38.05.810(g), the commissioner may waive the revisionary interest of the states' interest. This decision has determined that the importance of a reverter is appropriate and this decision proposes to void this reverter. (See N. Revisionary Interest, page 11 of 22)

This decision further determines that, for those lands to be conveyed to the borough, that certain conditions and restrictions are appropriate and are necessary to ensure the protection of import resources and public access. This decision therefore imposes restrictions reservations and stipulations that are to be part of the conveyance document, to ensure adherence to pertinent state statutes, state administrative code and the state's area plan.

B. Alternatives

The following alternatives exist:

1. Take no action to approval, or reject the CBW land selections. This alternative would, in effect, preclude the borough's ownership of lands considered to be important to their land base. This action would be inconsistent with the purpose of the Municipal Entitlement Act and inconsistent with the basis for the disapproval of a municipal entitlement selection. Such selections can only be rejected when a state's interests outweigh the interest of the borough, and there is no basis for such a determination.
2. Reject the borough's selections in their entirety. This alternative would have the same effect as Alternative #1 and would, similarly, be inconsistent with the statutory basis for rejection of a municipal selection.
3. Approve in part with management authority transferred; reject in part to retain in state ownership (AS 29.65). Additionally, approve in part, under AS 38.05.810(a) with management authority transferred and waive the state's revisionary interest under AS 38.05.810(g). This alternative is

effective in meeting the intent of the Municipal Entitlement Act to convey appropriately classified state general grant land to the City and Borough of Wrangell and lands for public and charitable use.

VIII. RECOMMENDATION

A. Recommended alternative

This decision determines that Alternative 3 is the preferred action and best fits the intent of the Municipal Entitlement Act. The City and Borough of Wrangell land selections in part, are approved for conveyance, subject to the conditions, restrictions and reservations listed below.

B. Recommended conditions, restrictions and reservations

The state land proposed for conveyance to the City and Borough of Wrangell are to be subject to the following conditions, restrictions and reservations, and these conditions attach upon transfer of equitable title and issuance of conveyance documents.

Conditions

1. The state will retain in state ownership the bed of navigable waters from the ordinary high water mark to the ordinary high water mark, including all gravel bars and islands, pursuant to 11 AAC 51.035.
2. The location of the ordinary high water mark of navigable waters will be determined at the time of survey to determine the specific area to be retained by the state in accordance to AS 38.05.127 and 11 AAC 51.
3. The location of the mean high water mark will be determined at the time of survey in accordance to AS 38.05.127 and 11 AAC 51.
4. Management authority for public access easements is transferred to the City and Borough of Wrangell once the Final Finding and Decision becomes effective. No such easements may be vacated, abandoned or otherwise extinguished or rendered incapable of reasonable use by the public without approval of the State of Alaska, unless an alternative means for reasonable public access is provided and approved by the state.
5. Management authority will transfer to the City and Borough of Wrangell on those lands approved for conveyance once the Final Finding and Decision becomes effective.
6. The states' revisionary interest under AS 38.05.810(g) is waived.
7. Administration of state leases and permits pertinent to the surface estate will be transferred to the City and Borough of Wrangell, if any, once the Final Finding and Decision becomes effective. Administration of issued state leases and permits, in the mineral estate will remain with the state.
8. CBW may execute conditional leases and make conditional sales prior to issuance of a state patent in accordance to AS 29.65.070(b) on lands approved for conveyance, once the Final Finding and Decision becomes effective.

9. The net chargeable acreage approved for conveyance shall be credited towards partial fulfillment of the City and Borough of Wrangell municipal land entitlement pursuant to AS 29.65.010 and AS 38.05.810.

Restrictions and Reservations

Conveyance document will include the following as a 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 a 50-foot wide easement on each side of all surveyed and unsurveyed section lines in accordance with AS 19.10.010 and 11 AAC 51.025.
3. Reservation of a continuous public access easement, 50-feet wide, upland of and adjoining the *mean high water mark* of Earl West Cove (Map 3), Section 34, T. 62 S., R. 80 E, CRM pursuant to AS 38.05.127 and 11 AAC 51 (TABLE 4).
4. Reservation of a continuous public access easement, 50-feet wide, upland of and adjoining the *ordinary high water* mark of all navigable and public waters pursuant to AS 38.05.127 and 11 AAC 51 (TABLE 3).
5. Imposition of a riparian buffer easement of one-hundred (100) feet wide to be located upland and adjoining the ordinary high water mark of (TABLE 3), the purpose of which is to protect the riparian area of the aforementioned waterbody. Only water dependent uses of the type described in [former] 6 AAC 80.900(17) are allowed within the first 70-feet from ordinary high water mark. No more than 25% of this area may be de-vegetated and no more than 50% may be de-vegetated in areas in excess of 70-feet. All such uses are subject to the requirements of the 'along' easement imposed under AS 38.05.127.
6. 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.
7. Reserved to the United States, a sixty-six (66) feet wide, Forest Development Road No. 6299 (Thoms Creek Road), located within Section 31, T. 65 S., R. 86 E., CRM (Map 2-Thoms Place).
8. 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.

C. RECOMMENDED ACTION ON MUNICIPAL SELECTIONS

This decision recommends conveyance of state owned vacant, unappropriated, unreserved general grant land to the CBW and rejects a portion of the their land selections all located in the Copper River Meridian, of Southeast Alaska. TABLES 4 and 5 lists only estimated acreages, therefore the actual acreage amount to be conveyed will be determined at the time of survey.

LANDS PROPOSED FOR CONVEYANCE

TABLE 5 lists those lands approved for conveyance by this decision. Those lands approved for conveyance, acreages will be determined at time of survey and the final acreage amount is a net chargeable acreage that will be credited towards partial fulfillment of the CBW municipal land entitlement. The state will retain the beds including all the islands and gravel bars within any navigable waters and anadromous streams. The estimated acreages for conveyance does not account for any exclusions from navigable waters.

TABLE 5

Map # Parcel Name	Copper River Meridian, Township, Range	Section	Acres
2 Thoms Place	T. 65 S., R. 86 E.	Sec. 31: NE1/4	160
3 St. Johns Harbor	T. 62 S., R. 80 E.	Sec. 33: that portion south of the recently approved land to the CBW in the 2013 FFD.	320
	T. 63 S., R. 80 E.	Sec. 34: Government Lot1	369
		Sec. 04: Lot 1(W1/2)	444
		TOTAL	1,293

LANDS PROPOSED TO BE REJECTED

TABLE 6 lists those lands that were selected by the CBW that are rejected for conveyance in this decision. These include lands to be retained by the state as the interest of the state outweighs that of the CBW or where the state has no ownership rights in the land that was selected.

TABLE 6

Map # Parcel Name	MTR	Section	Acres
1 Earl West Cove	T. 64 S., R. 85 E.	Section 02: NE1/4NW1/4	40
		Section 03: S1/2SE1/4	80
		Section 10: NE 1/4	160
	T. 63 S., R. 85 E.	Section 35: Government Lots	
		Lot 1	5.53
		Lot 2	26.11
		Lot 3	38.82
		Lot 4	8.32
		TOTAL	358.78

VIII. FINDINGS AND PRELIMINARY DECISION

The following are the findings for this Preliminary Decision:

1. That it is *appropriate to convey* 973 acres of state owned VUU land to CBW. This decision determines that the interest of the state to retain this land does not outweigh the interests of the borough to obtain it under AS 29.65.
2. That it is *appropriate to convey* 320 acres of state owned land to the CBW under AS 38.05.810(a). This decision determines that the interest of the state to retain this land does not outweigh the interests of the borough to obtain it.
3. That it is appropriate to waive the reverter interest requirement under AS 38.05.810(g) for that acreage to be conveyed under AS 38.05.810(a).
4. That it is *appropriate to reject* 78.78 acres consisting of Government Lots 1-4 in Section 35, T. 63 S., R85 E., CRM and 40 acres in Section 2, T. 64 S., R. 85 E., impact the ADOT&PF rights-of-way easement for Forest Service Road No. 6265 by a corridor of 300-feet in width using the most prominent area for development leaving undevelopable hillside uplands. The interest of the state weighs that of the CBW interests (Map 1: Earl West Cove).
5. That it is *appropriate to reject* 240 acres consisting of 80 acres within Section 3 (S½SE¼) and 160 acres (NE¼) within Section 10, T. 64 S., R. 85 E., CRM, since these areas are necessary to the construction of a future regional transportation facility and is essential to the operation of the SESF.

This Preliminary Decision (PD) determines that Alternate #3 is the preferred alternative. I have reviewed and considered the material in this PD and find that the recommended actions may be the best interest of the state and the PD is hereby approved to proceed to public notice.

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



Sandra Swanger-Jensen, Manager
Municipal Entitlement Unit
Resource Assessment & Development Section

2/19/2015

Date



Bruce Phelps, Section Chief
Resource Assessment and Development Section

2/19/15

Date

PUBLIC NOTICE, DECISION AND APPEAL PROCEDURES

The public is invited to comment on this Preliminary Decision propose to transfer ownership of state land to the City and Borough of Wrangell. Comments may be provided in written form to the Division of Mining, Land and Water, Resource Assessment and Development Section, Municipal Entitlement Unit, Attention: Mary Hermon, at 550 West 7th Avenue, Suite 1050, Anchorage, Alaska 99501-3579; by fax (907) 269-8915 or by electronic email: mary.hermon@alaska.gov or by phone (907) 269-6546 and must b received **on or before March 23, 2015** to order to ensure consideration.

The postmaster in the City of Wrangell 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 DMLW Municipal Entitlement website at: <http://dnr.alaska.gov/mlw/muni/>. Additionally, the public notice will be sent to the City and Borough of Wrangell, and tribal governments in the area.

Following the comment deadline, those written responses received will be considered and this Preliminary Decision (PD) may be modified to incorporate the public comments in a 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. Please direct all inquiries or questions to Mary Hermon at (907) 269-6546, or to the above address, fax or by electronic email.

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

Vicinity Map

Map 1: Earl West Cove

Map 2: Thoms Place

Map 3: St. John Harbor