

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

**FINAL FINDING AND DECISION
CONVEYANCE OF MENTAL HEALTH TRUST REPLACEMENT LAND
ADL 107859**

RELATED ACTIONS

Area Plan Amendment

AS 38.04.065

Reclassification of Land

AS 38.05.300

Mineral Order 1046 Amendment

AS 38.05.185

This Final Finding and Decision (FFD) is intended to compliment and update the Preliminary Decision signed July 20, 2009. This FFD also incorporates an additional stipulation, described under Proposed Action.

Proposed Action

The Division of Mining, Land and Water (DMLW) of the Department of Natural Resources (DNR) will convey a parcel of state owned land located in Downtown Juneau, Alaska to the Mental Health Trust Authority (Trust Authority or the Trust). The parcel is 0.34 acres in size (14, 657.5 sq. ft.). The land is currently occupied by the Department of Public Safety (DPS) office building on Whittier Street. This decision deals only with the land, and it is intended that the state will convey the DPS building to the Trust Authority in a separate action. The Trust may not impose lease rental fees prior to relocation of state offices occupying the DPS building or abandonment of the premises by the State.

The purpose of this action, in part, is to fulfill the States' obligation under the 1994 Settlement Agreement between the State of Alaska and the Settling Plaintiffs to the Mental Health Trust Land litigation, and to compensate the Trust Authority for land conveyed by the State in error.

Any person who commented on the preliminary decision may appeal this decision to the Commissioner of the Department of Natural Resources. The deadline for appeal is 5 p.m., November 12, 2009; See p. 3 for appeal procedures.

Authority

DNR will convey this land to the Mental Health Trust Authority in accordance with Section 40, Chapter 5, FSSLA 1994 as amended by Sections 4 and 5, Chapter 1, SSLA 1994; the Settlement Agreement between the state and the Settling Plaintiffs (Articles III and IV(4)); AS 37.14.009(a)(2); AS 38.05.801(b)2-3; AS 38.05.035(e); and AS 38.50. These documents are available for review at the address given in the *Appeal Procedures* section of this decision; See p. 3 for appeal procedures.

Planning, Classification and Related Actions

Three associated actions accompany this final finding and decision: a plan amendment to the Juneau State Land Plan (1993) to designate the parcel *Public facilities reserved site – transfer*; a land classification order (SE -93-004A05) to reclassify the parcel to *Settlement Land*; and an amendment to Mineral Closing Order No. 1046 to close the parcel to mineral entry and development under AS 38.05.185.

Public Notice/Public Response

Notice of this proposed conveyance to the Mental Health Land Trust was placed in Juneau Empire, local post offices received a copy of the public notice, and copies went to agencies, local government, native organizations, and individuals/entities likely to be affected by the decision. In addition, public notice on the Internet was posted on the State's webpage under *On-line Public Notice* and under DNR's public notice site.

The Alaska Dept. of Fish and Game commented that the department does not have any concerns with the proposed conveyance.

No other comments were received.

Discussion

The TLO has nominated this parcel as replacement land because of its location and suitability for use as an integral part of the Mental Health Trust's planned project to construct a new office building in downtown Juneau. This parcel is nearby the planned location of the new office building and would serve as the site of a future parking garage at a time to be determined by the Trust. Interim surface parking will be provided on the "Subport" parcel immediately west of the new office building. Acquisition of the DPS parcel is necessary to the overall feasibility of the Trust's project.

Finding

The parcel is appropriate for conveyance to the Trust Authority. The parcel is adjacent to land currently owned by the Trust Authority. This conveyance should benefit both the Trust and the State. Conveyance of this parcel supports the objectives of the Memorandum of Agreement (#8084) between Alaska Department of Administration and the Trust Land Office to enter into long term leases for office space and surface parking in the downtown Juneau "Subport Area". This conveyance will facilitate construction by the Trust of a new parking garage and office building, and the relocation of certain state government offices from the departments of Administration, Labor, Public Safety, and Corrections, to the new office building.

While DNR fully anticipates that the Department of Administration will expedite transfer of title to the DPS building to the Trust Authority, DNR has no authority to assure the timeliness of this transaction, and therefore DNR finds that is in the best interest of the state to convey this land subject to the condition that the Trust Authority shall not impose

lease rental fees on this property prior to relocation of state offices from the DPS building to a new location or abandonment of the premises by the State.

Final Finding and Decision – Conveyance of State Land

The finding presented above has been reviewed and considered. The case file has been found to be complete and the requirements of all applicable statutes have been satisfied. I find that it is in the best interest of the state to proceed with this conveyance under authority of the Settlement Agreement and AS 38.05.035(e).



Bruce Phelps
Chief, Resource Assessment and Development Section

October 22, 2009
Date

Appeal Procedure

A person affected by this decision who provided timely written comment or public hearing comment or testimony on this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received by **5 p.m., November 12, 2009** and must be delivered to Tom Irwin, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. If no appeal is filed by the appeal deadline, this decision goes into effect as a final order and decision on **November 23, 2009**. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to the Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

The right is reserved to waive technical defects in this document.

Attachments:

- Area Plan Amendment
- Land Classification Order
- Mineral Order Amendment

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

AMENDMENT TO JUNEAU STATE LAND PLAN (1993)
Mental Health Replacement Land Conveyance ADL 107859
Land Classification Order SE-93-004A05

PARCEL H, JUNEAU, ALASKA

Name: Parcel H, Juneau, Alaska.

Location: Located on Whittier Street in the Subport area of Juneau, Alaska.

Authority: The authority to amend area plans derives from AS 38.04.065 and is explained in 11 AAC 55.030(f). The authority to approve area plan amendments has been delegated to the Director of the Division of Mining, Land and Water, per Department Order 003.

Current Plan: The current plan is: Juneau State Land Plan 1993 (JSLP). Parcel H is located in Management Unit 6a - Downtown Juneau (JSLP p. 3-113), Subunit 6a29 (JSLP p. 3-116/118). Subunit 6a29 is designated *Public facilities reserved site – retain* and is classified *Reserved Use Land*. This subunit contains the Dept. of Public Safety office building and the National Guard Armory.

Legal Description: The State acquired Parcel H from the City & Borough of Juneau, July 1, 1968; the parcel is designated OSL 404 in state land records. See Attachment A.

Proposed Amendment: Final Finding and Decision ADL 107859 (October 22, 2009) proposes that the JSLP be amended to (re)designate Parcel H as *Public facilities reserved site – transfer* and reclassify the parcel as *Settlement Land*. This amendment is required to allow transfer of Parcel H to the Mental Health Trust Authority.

Assessment: According to the JSLP (p. 3-116), Subunit 6a29 and several other subunits (lots) in downtown Juneau are to be “designated and managed for public facilities.” The action proposed by Final Finding and Decision ADL 107859, conveyance of Parcel H to the Mental Health Trust Authority, is consistent with this management intent. Transfer of title to the Trust Authority will facilitate planned future construction of a new parking garage on Parcel H (replacing the existing office building, currently occupied by the Dept. of Public Safety) and also construction of a new state office building on nearby Mental Health Trust property. Simultaneously, conveyance of Parcel H to the Trust Authority will allow the value of Parcel H to be credited to the Mental Health *replacement land account* in partial fulfillment of the State’s obligation under the 1994 Mental Health Lands Settlement Agreement.

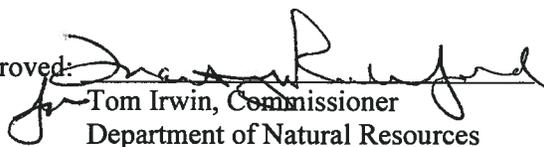
Decision: The standards for a plan amendment have been reviewed and have been met. I find the amendment to the Juneau State Land Plan 1993, as described above, meets the criteria for a plan amendment under 11 AAC 55.030(f) and is hereby approved,

Concur:


Richard H. Mylius, Director
Division of Mining, Land & Water

October 22, 2009
Date

Approved:


Tom Irwin, Commissioner
Department of Natural Resources

October 22, 2009
Date

AMENDMENT TO JUNEAU STATE LAND PLAN (1993)
Mental Health Replacement Land Conveyance ADL 107859
Land Classification Order SE-93-004A05

Attachment A – Legal Description

PARCEL H, JUNEAU, ALASKA

Copper River Meridian, Township 41 South, Range 67 East, Section 23

STATUTORY WARRANTY DEED	
<p><i>Note: The plat number cited in the Statutory Warranty Deed, Plat No. 348, Juneau Recording District, is incorrect; the correct plat number is 352 according to DNR Title Report No. 166 dated September 16, 2008.</i></p>	<p>THE GRANTOR, City of Juneau, Alaska, whose address is 155 South Seward Street, Juneau, Alaska, for and in consideration of One Dollar (\$1.00) and other good and valuable considerations in hand paid, and pursuant to that certain agreement between Grantor and Grantee herein, dated September 1967, and signed by Grantor on 16 October 1967, and by Grantee on 3 January 1968 concerning certain land transfers in the Subport area of Juneau, Alaska, conveys and warrants to the STATE OF ALASKA the following described real estate:</p>
	<p>PARCEL H</p>
	<p>Commencing at the most southerly corner of Lot 14, Block 68, as the same appears on the official plat of the Tidelands Addition to the City of Juneau, Alaska, a plat of subdivision of Alaska Tidelands Survey No.3, filed in the office of the Recorder for the Juneau Recording District at Juneau, Alaska, as Plat No. 348, the True Point of Beginning; thence N. 25°20' W. 143.00 feet along the southwesterly boundary line of said Lot 14; thence N. 64°40' E. 102. 50 feet; thence S. 25° 20' E. 143.00 feet to a point on the southeasterly boundary line of said Lot 14; thence S. 64° 40' W. 102.50 feet along said southeasterly boundary line to the point of beginning, containing an area of 14,657.5 square feet, more or less, situated in the State of Alaska.</p>
	<p>Subject to the following reservations and exceptions:</p>
	<p>1. Terms, provisions and reservations under the Submerged Lands Act,(43 USCA 1301,67 Stat. 29) and the enabling act (Public Law 85-508,72 Stat. 339.) 2. Reservations, terms and conditions as set forth in that certain patent from the State of Alaska to the City of Juneau, for tidelands, recorded October 15, 1962, in Book 65, at Page 175.</p>

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

LAND CLASSIFICATION ORDER NO. SE-93-004A05
Mental Health Replacement Land Conveyance ADL 107859

PARCEL H, JUNEAU, ALASKA

- I. Name: PARCEL H, located on Whittier Street in the Subport area of Juneau, Alaska.
- II. The classifications in Part III (below) are based on written justification contained in Final Finding and Decision ADL 107859 (October 22, 2009).
- III.

<u>Legal Description</u>	<u>Acreage</u>	<u>Acquisition Authority</u>	<u>Existing Classification</u>	<u>Classification by this action</u>
See Attachment A.	0.34	OSL 404	Reserved Use	Settlement
- IV. This order is issued under the authority granted by AS 38.04.065 and AS 38.05.300 to the Commissioner of the Department of Natural Resources. The above described lands are hereby designated and classified as indicated. Nothing shall prevent the reclassification of these lands if warranted in the public interest.

Classified  Date: October 22, 2009
Commissioner, Department of Natural Resources

LAND CLASSIFICATION ORDER NO. SE-93-004A05
Mental Health Replacement Land Conveyance ADL 107859

Attachment A – Legal Description

PARCEL H, JUNEAU, ALASKA

Copper River Meridian, Township 41 South, Range 67 East, Section 23

<p><i>Note: The plat number cited in the Statutory Warranty Deed, Plat No. <u>348</u>, Juneau Recording District, is incorrect; the correct plat number is <u>352</u> according to DNR Title Report No. 166 dated September 16, 2008.</i></p>	<p style="text-align: center;">STATUTORY WARRANTY DEED</p> <p>THE GRANTOR, City of Juneau, Alaska, whose address is 155 South Seward Street, Juneau, Alaska, for and in consideration of One Dollar (\$1.00) and other good and valuable considerations in hand paid, and pursuant to that certain agreement between Grantor and Grantee herein, dated September 1967, and signed by Grantor on 16 October 1967, and by Grantee on 3 January 1968 concerning certain land transfers in the Subport area of Juneau, Alaska, conveys and warrants to the STATE OF ALASKA the following described real estate:</p> <p style="text-align: center;">PARCEL H</p> <p>Commencing at the most southerly corner of Lot 14, Block 68, as the same appears on the official plat of the Tidelands Addition to the City of Juneau, Alaska, a plat of subdivision of Alaska Tidelands Survey No.3, filed in the office of the Recorder for the Juneau Recording District at Juneau, Alaska, as Plat No. 348, the True Point of Beginning; thence N. 25°20' W. 143.00 feet along the southwesterly boundary line of said Lot 14; thence N. 64°40' E. 102. 50 feet; thence S. 25° 20' E. 143.00 feet to a point on the southeasterly boundary line of said Lot 14; thence S. 64° 40' W. 102.50 feet along said southeasterly boundary line to the point of beginning, containing an area of 14,657.5 square feet, more or less, situated in the State of Alaska.</p> <p>Subject to the following reservations and exceptions:</p> <ol style="list-style-type: none">1. Terms, provisions and reservations under the Submerged Lands Act,(43 USCA 1301,67 Stat. 29) and the enabling act (Public Law 85-508,72 Stat. 339.)2. Reservations, terms and conditions as set forth in that certain patent from the State of Alaska to the City of Juneau, for tidelands, recorded October 15, 1962, in Book 65, at Page 175.
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LAND CLASSIFICATION ORDER NO. SE-93-004A05

Request-for-Reconsideration Procedure for this Decision

A person affected by this decision who provided timely written comment or public hearing testimony on this decision may request reconsideration, in accordance with 11 AAC 02. Any reconsideration request must be received by **November 12, 2009** and may be mailed or delivered to Tom Irwin, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 907-269-8918 or sent by electronic mail to dnr_appeals@alaska.gov. If reconsideration is not requested by that date or if the commissioner does not order reconsideration on his own motion, this decision goes into effect as a final order and decision on **November 23, 2009**. Failure of the commissioner to act on a request for reconsideration within 30 days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request reconsideration of this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

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

MINERAL ORDER NO. 1046 (AMENDMENT)
Mental Health Replacement Land Conveyance ADL 107859

PARCEL H, JUNEAU, ALASKA

 X Closing Lands to Mineral Entry Opening Lands to Mineral Entry

- I. Name: PARCEL H, located on Whittier Street in the Subport area of Juneau, Alaska.
- II. Reason for Mineral Order: This mineral order is based on the attached Finding of the Commissioner and applicable statutes.
- III. Authority: AS 38.05.185 and AS 38.05.300(b).
- III. Location and Legal Description: Land to be closed under this order is a parcel described by meets and bounds, known as Parcel H, located on Whittier Street in the Subport area of Juneau, Alaska, and further described in: Attachment A.
- IV. Mineral Order No. 1046 is amended to include Parcel H (ADL 107859).
- V. Mineral Closing: This mineral order is subject to valid existing rights and is issued under the authority granted by AS 38.05.185 – AS 38.05.275 to the Department of Natural Resources. In accordance with AS 38.05.185(a), I find that the best interests of the State of Alaska and its residents are served by closure of the land described in this mineral closing order to entry under the mineral location and mining laws of the State of Alaska. The attached described lands are hereby closed to entry under the locatable mineral and mining laws of the State of Alaska.

Approved:


Richard H. Mylius, Director
Division of Mining, Land & Water

October 22, 2009
Date



MINERAL ORDER NO. 1046 (AMENDMENT)
Mental Health Replacement Land Conveyance ADL 107859

FINDING OF THE COMMISSIONER
AS 38.05.185(a)

PARCEL H, JUNEAU, ALASKA

The Department of Natural Resources (DNR) hereby determines that it is appropriate to close 0.34 acres (14,657.5 square feet) of state land to new mineral entry under AS 38.05.185(a). This land is located on Whittier Street in the Sub-Port Area of the City of Juneau, Alaska. The purpose of this closure is to ensure that the entirety of the mineral estate can be conveyed to the Mental Health Trust Authority (Trust Authority).

The Preliminary Decision and the Final Finding and Decision, ADL 107859, are the basis for this closure. The Final Finding and Decision (**October 15, 2009**) determined that the aforementioned land, described more specifically in the attached Mineral Order is appropriate for conveyance to the Trust Authority. Under a Settlement Agreement between the Settling Plaintiffs and the State of Alaska (1994) concerning Mental Health Trust Lands, the State is required to compensate the Trust Authority with land of equal value for lands conveyed in error to the Trust Authority. The parcel identified in this decision has been determined to be appropriate for this purpose.

Under Department Order 142 (Management of Mental Health Trust Land) DNR is required to close to mineral entry land it conveys to the Trust Authority pursuant to the 1994 Mental Health Settlement Legislation. This closure is consistent with this requirement of Department Order 142. Without this closure, a state mining claim could be filed on the property during the interim period between the Final Finding and Decision and issuance of a quit claim deed, which could have the effect of reducing the value of the mineral estate to be conveyed to the Trust Authority. With this closure, potentially inconsistent surface and subsurface uses will be precluded.

For the reasons stated above and in accordance with AS 38.05.185(a), I find that the best interests of the State of Alaska and the Trust Authority are served by closing the land described on Attachment A to entry under the locatable mineral and mining laws of the State of Alaska.


Richard H. Mylius, Director
Division of Mining, Land & Water

October 22, 2009
Date



MINERAL ORDER NO. 1046 (AMENDMENT)
Mental Health Replacement Land Conveyance ADL 107859

Attachment A – Legal Description

PARCEL H, JUNEAU, ALASKA

Copper River Meridian, Township 41 South, Range 67 East, Section 23

<p><i>Note: The plat number cited in the Statutory Warranty Deed, Plat No. 348, Juneau Recording District, is incorrect; the correct plat number is 352 according to DNR Title Report No. 166 dated September 16, 2008.</i></p>	<p style="text-align: center;">STATUTORY WARRANTY DEED</p> <p>THE GRANTOR, City of Juneau, Alaska, whose address is 155 South Seward Street, Juneau, Alaska, for and in consideration of One Dollar (\$1.00) and other good and valuable considerations in hand paid, and pursuant to that certain agreement between Grantor and Grantee herein, dated September 1967, and signed by Grantor on 16 October 1967, and by Grantee on 3 January 1968 concerning certain land transfers in the Subport area of Juneau, Alaska, conveys and warrants to the STATE OF ALASKA the following described real estate:</p> <p style="text-align: center;">PARCEL H</p> <p>Commencing at the most southerly corner of Lot 14, Block 68, as the same appears on the official plat of the Tidelands Addition to the City of Juneau, Alaska, a plat of subdivision of Alaska Tidelands Survey No.3, filed in the office of the Recorder for the Juneau Recording District at Juneau, Alaska, as Plat No. 348, the True Point of Beginning; thence N. 25°20' W. 143.00 feet along the southwesterly boundary line of said Lot 14; thence N. 64°40' E. 102. 50 feet; thence S. 25° 20' E. 143.00 feet to a point on the southeasterly boundary line of said Lot 14; thence S. 64° 40' W. 102.50 feet along said southeasterly boundary line to the point of beginning, containing an area of 14,657.5 square feet, more or less, situated in the State of Alaska.</p> <p>Subject to the following reservations and exceptions:</p> <ol style="list-style-type: none">1. Terms, provisions and reservations under the Submerged Lands Act,(43 USCA 1301,67 Stat. 29) and the enabling act (Public Law 85-508,72 Stat. 339.)2. Reservations, terms and conditions as set forth in that certain patent from the State of Alaska to the City of Juneau, for tidelands, recorded October 15, 1962, in Book 65, at Page 175.
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