

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

Preliminary Decision under AS 38.05.025

**Tideland Conveyance to City of Craig under AS 38.05.825
ADL 109054 – City of Craig Downtown Harbor**

PROPOSED ACTION: The Alaska Department of Natural Resources, Division of Mining, Land and Water, Land Conveyance Section (DNR), proposes to convey one parcel of state-owned tide and submerged land to the City of Craig, pursuant to AS 38.05.825, Conveyance of Tide and Submerged Land to municipalities, containing approximately 20 acres, final acreage will be determined by completing survey requirements. See Attachment A for a map of the parcel to be conveyed.

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

The public is invited to comment on this Preliminary Decision (PD). **The deadline for comments to be received is on or before September 4, 2020.** Refer to this decision under the heading PUBLIC NOTICE, DECISION AND APPEAL PROCEDURES on the final page of this decision for details on how, when and where to submit your comments.

AUTHORITY: The applicable authority includes Alaska Statutes (AS) and Alaska Administrative Code (AAC), specifically AS 38.05.035(e), AS 38.05.825, AS 38.05.125, AS 38.05.127, 11 AAC 51 and 11 AAC 55.

ADMINISTRATIVE RECORD: The administrative record for this PD is case file ADL 109054, which includes, but is not limited to the following: Prince of Wales Island Area Plan, 2008 Prince of Wales Island Area Plan Amendment, the Alaska Department of Environmental Conservation (DEC) Contaminated Sites map, the Alaska Department of Fish and Game (ADF&G) Alaska Fish Resource Monitor, and the 2007 Craig Coastal Management Plan.

SCOPE OF DECISION: The scope of administrative review under AS 38.05.825 and AS 38.05.035(e) for this proposed land transfer is limited to the determination on whether it is appropriate to convey the tidelands from the State of Alaska to the City of Craig, and the determination of imposing a ‘to’ and ‘along’ easement under AS 38.05.127. It additionally includes identification of any third-party interests, other interests of record, and stipulations necessary to ensure that statutory requirements have been met. This decision does not take into account any future development, or the effects of such development, that may occur after the transfer.

DESCRIPTION:

Location: The parcel is located on submerged lands within Klawock Inlet, adjacent to Alaska Tidelands Survey (ATS) No. 212, within the City of Craig. It is located within Section 6, Township 74 South, Range 81 East, Copper River Meridian, more specifically described as follows:

The unsurveyed parcel comprising approximately twenty acres is located within Copper River Meridian, Southeast 1/4 of Section 6 of Township 74 South, Range 81 East, USGS Quad Map Craig B-4 NE, Latitude 55.479°N, Longitude 133.154°W, north of tidelands previously surveyed as ATS No. 212 in Klawock Inlet, City of Craig, Alaska. Final acreage will be determined by the required ATS.

Municipality: City of Craig

Native Corporation: Sealaska Corporation

Tribal Contact: Central Council of the Tlingit and Haida Indian Tribes of Alaska, Craig Tribal Association, Shaan-Seet, Incorporated

Water Bodies: The parcel is located in a navigable body of water, Klawock Inlet.

Title: Acquisition Authority: The State of Alaska received title to the affected tide and submerged lands under the Alaska Statehood Act, Public Law 85-508, the Submerged Lands Act, Public Law 31 and under the Doctrine of Equal Footing upon entry of the state into the Union. Management is subject to the Public Trust Doctrine.

Third Party Interests: None identified.

Background: On March 5, 2020, the City of Craig submitted an application for conveyance of this submerged parcel, totaling 20 acres. A city resolution dated February 20, 2020 approved the proposed development.

The City of Craig has applied for a tideland conveyance of the submerged parcel in order to construct one rubble mound breakwater and one public moorage float system to create a year-round public boat harbor. The proposed parcel is seaward of city-owned tide and submerged lands within ATS 212.

The City of Craig has several harbor facilities designed to meet the needs of sport, recreational, subsistence, tourist, and commercial vessels. Construction of a public boat harbor within the proposed parcel will continue to meet the needs of the community by providing safe, year-round vessel moorage.

The 2006 Craig Coastal Management Plan (CCMP) states that Craig will continue to invest in the fishing industry through expansion of commercial and recreational harbors that increase the number of vessels based in Craig. The CCMP also states that filling may be required for expanded development of marine transportation facilities.

Planning and Classification: The project area is within the 1998 Prince of Wales Island Area Plan (POWIAP), and the 2008 Prince of Wales Island Area Plan Amendment (POWIAPA). The project area is within Unit 17: Craig/Klawock, subunit CT-30. AS 38.05.825(a)(5) requires that land to be conveyed must be either “classified for waterfront development or for another use that is consistent or compatible with the use proposed by the municipality or the proposed use of the land is consistent or compatible with a land use plan adopted by the municipality or the department.”

The general management and intent of the POWIAPA in Unit 17 was reviewed for consistency with the proposed conveyance. The lands are designated as General Use (Gu) under Land Classification Order No. SE-98-001A02. This designation converts to a classification of Resource Management Land (RMG). Lands designated Gu contain one or more resource values, none of which is of sufficiently high value to merit designation as a primary use, or, because of the size of the unit, a variety of uses can be accommodated with appropriate siting and design considerations (POWIAPA pg. 1-3).

The management intent for subunit CT-30 is to manage the unit for multiple uses, while protecting important habitats and resources (pg. 2 – 35). The proposed site is adjacent to an anchorage, and sport fishing for king salmon is conducted in the area. The proposed development is compatible with the area plan classification because the project would provide facilities to utilize the surrounding area for multiple uses with minimal impact.

Access, including access to & along public waters: The parcel is surrounded by and accessible by a navigable body of water. Pursuant to AS 38.05.825, the conveyance of tidelands cannot unreasonably interfere with public access and the municipality must provide reasonable access to public waters and tidelands. In addition, before a disposal of state land, AS 38.05.127 requires a determination by DNR regarding the reservation of specific public access easements to and along these waters.

In the final decision on this proposed action, DNR will determine whether this disposal of state interest will reserve a public access easement pursuant to AS 38.05.127(a)(2). Pursuant to 11 AAC 51.045, DNR will consider comments and evidence provided by the Alaska Department of Fish and Game (ADF&G) and from a municipality or other person during the public notice and review period in making this determination.

Reservation of Mineral Estate: The State of Alaska, as required by Section 6(i) of the Alaska Statehood Act and AS 38.05.125, expressly saves, excepts and reserves out of the grant those resources specified by statute. These include, but are not limited to, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, including the right to explore the same. The State also reserves the right to enter the land for the purposes of exploring for, developing, and producing these mineral resources. Exploration and development, if any, which could occur, would be consistent with AS 38.05.130 and other applicable statutes and regulations.

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

The City of Craig is responsible for inspection of the area of the tideland selection and familiarization with the condition and quality of the land. The State makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land proposed here for conveyance. The State does not assume any liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances ever be identified.

Survey: An Alaska Tideland Survey (ATS) will be required for parcels that are not adequately surveyed and platted for conveyance, at the expense of the City of Craig, prior to issuance of a state tideland patent. If no approved survey exists, then one must be performed by an Alaska Registered Land Surveyor under direction of the DNR Survey Section. This parcel will require a survey, and the City of Craig 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.

Conditional Leases and Permits: If the tidelands are approved for conveyance, the City of Craig will receive management authority under AS 38.05.825, 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 tidelands approved for conveyance to shore fisheries, pursuant to AS 38.05.824(d). There are no shore fisheries within the selected tideland area.

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

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; when the FFD becomes effective, unless specified differently. Applications for a lease or permit that have not been adjudicated or issued will be closed.

Archaeological Resources: The Alaska Office of History and Archaeology (OHA) 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 tidelands 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).

Agency Review: The conveyance application documents were distributed to state agencies for review from May 28, 2020 through June 11, 2020. The intent of an agency review is to request comments from agencies that may be affected by a conveyance decision. Agencies are given the opportunity to evaluate and comment on the municipality's land selection to determine if the State should retain all or a portion of the selected lands, and if so, provide supporting reasons for the requested action. Additionally, agencies are requested to identify any stipulations that may be appropriate if the land is to be conveyed out of state ownership.

The agencies contacted were ADF&G; DEC; Department of Transportation & Public Facilities; DNR-Division of Mining Land & Water sections; DNR-Division of Agriculture; DNR-Division of Geological & Geophysical Surveys; DNR-Division of Oil and Gas; DNR-Division of Parks and Outdoor Recreation; DNR-State Historic Preservation Office; and the Mental Health Trust Land Office.

Agency Comments:

DNR received brief comments of non-objection from the following agencies:
DNR Division of Agriculture, DNR Division of Oil and Gas, DNR DMLW Mining section, and the Department of Transportation & Public Facilities.

DNR response: DNR appreciates your review of the application materials.

ADF&G, Division of Wildlife Conservation comment: ADF&G does not have any objections to the proposed conveyance, but indicated that the proposed location is used for sport fishing and is within the habitat and biologically important areas for multiple marine mammal species such as the Stellar sea lion and Mexico humpback whale. The project has the potential to displace marine mammals during important periods, and ADF&G requests that construction be avoided during the feeding months of June through November. In addition, ADF&G requested that the proposed harbor facilities utilize a design to reduce marine mammal entanglement. This involves keeping lines secured and under tension, ensuring waste material and debris are collected and disposed of correctly, and using caution when operating vessels. Any entanglements should be reported to the National Marine Fisheries Service (NMFS) 24-hour hotline at (877) 925-7773.

DNR response: DNR appreciates your review of the application materials. DNR will provide NMFS information and recommendations on construction timing to the City of Craig. However, the scope of this decision is limited only to the transfer of title to this land from the State of Alaska to the City of Craig. It does not take into account any future development, or the effects of such development, that may occur after the transfer.

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

Compliance with qualifications under AS 38.05.825: AS 38.05.825(a) requires DNR to convey to the municipality tide and submerged lands suitable for occupation and development when requested by the municipality unless it is found that public interest in retaining state ownership clearly outweighs municipal interest, and if the land is within the boundaries of the municipality; the use does not unreasonably interfere with navigation or public access; the municipality has applied for conveyance; the land is not subject to a shore fisheries lease under AS 38.05.082; the land classification is consistent with or compatible with the proposed use; and the land is required for a public or private development approved by the municipality. The City of Craig has met the application requirements of the statute through the following:

- Public Interest- The public interest in retaining these lands in state ownership does not outweigh the municipal interest in managing these submerged lands because the conveyance will accommodate a municipal harbor facility that will be used by the public. DNR believes that there are no other overriding state interests; the municipal interest clearly rises above the public interest in retaining these lands in state ownership.
- Location- The land is within the boundary of the municipality.
- Navigation- The proposed use would not unreasonably interfere with navigation.
- Public Access- The proposed use would not unreasonably interfere with public access.
- Application- The municipality has submitted an application for conveyance.
- Shore Fisheries Leasing- The land is not subject to shore fisheries lease.
- Land Classification- The land classification is consistent with the proposed action.
- Municipal Approval of Development- The assembly supports the proposed development for this tideland conveyance through City of Craig Resolution No. 20-03.

DISCUSSION AND ALTERNATIVES:

Alternatives considered:

1. Take no action to approve, reject, or postpone the tide and submerged land selection by the City of Craig. 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 of Craig'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 the proposed conveyance of the tide and submerged land parcel to the City of Craig 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.

RECOMMENDATION:

A. Recommended alternative

DNR has determined that Alternative No. 3 is the preferred alternative. Under AS 38.05.825, no direct economic benefit is realized by the State, but further development of this parcel will serve the needs of the community of Craig. Facilitating community development activities in Craig indirectly provides economic benefit to the State by encouraging settlement and related economic activity. Additionally, the project meets the intent of the POWIAPA. DNR believes that the proposed conveyance complies with the requirements of AS 38.05.825, as discussed above. Unless public comment indicates that the parcel does not qualify for conveyance under AS 38.05.825, or that the public interest in retaining the parcel clearly outweighs the municipality's interest in retaining the parcel, DNR must convey the parcel subject to completion of an ATS.

B. Recommended conditions, restrictions and reservations

If approved for conveyance, applicable conditions, restrictions and reservations will be imposed upon transfer of equitable title when the Final Finding and Decision is effective and on the final 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 when the FFD is effective. Applications for state leases or permits in the subject area that have not been adjudicated or issued will be closed.
2. Management authority for the approved tidelands will be transferred to the City 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.
5. 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. Conveyance document to include following:

The approved tideland conveyance to the City of Craig is subject to the following conditions, restrictions, and reservations:

1. Valid existing rights, all required easements and the following conditions: 1) Grantee may lease the land, but may not sell it; 2) Title to the land conveyed under this authority reverts to the State upon dissolution of the municipality; 3) Grantee takes title to the tide and submerged lands subject to the Public Trust Doctrine that may be enforced by the State in a court of competent jurisdiction; 4) The municipality shall be required to ensure that reasonable access to public waters and tidelands is provided; 5) The municipality may not lease land conveyed under this section for shore fisheries, but after conveyance, the land may be leased by the State for shore fisheries under AS 38.05.082 if the Commissioner determines that the lease is compatible with the municipality's use of the land.
2. Pursuant to AS 38.05.125 the mineral estate shall not be conveyed.

FINDING:

The following are findings of this Preliminary Decision:

1. That it is appropriate to convey approximately 20 acres of state-owned tide and submerged lands to the City of Craig pursuant to AS 38.05.825.
2. That the interest of the state to retain these tide and submerged lands does not outweigh the interest of the City in obtaining the tideland selections.

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.

/s/ John King

John King, Adjudicator
Natural Resource Specialist III
Land Conveyances Section

August 5, 2020

Date

/s/ Rachel Longacre

Rachel Longacre, Manager
Section Chief
Land Conveyances Section

August 5, 2020

Date

PUBLIC NOTICE, FINAL DECISION AND APPEAL PROCESS:

Requesting Input for a Proposed Land Conveyance:
City of Craig Downtown Harbor – ADL 109054

Comment Period Ends 5:00PM, Friday, September 4, 2020

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

Location: Klawock Inlet, City of Craig

In accordance with the provisions AS 38.05.945, the Division of Mining, Land and Water has prepared a preliminary written decision proposing to convey a parcel containing approximately 20 acres of state-owned submerged land to the City of Craig within its municipal boundaries. The conveyed parcel will be used to construct two rubble mound breakwaters and a public moorage float system to create a year-round public boat harbor.

The public is invited to comment on the Preliminary Decision proposing to transfer ownership of state-owned tide and submerged lands to the City of Craig. Comments may be provided in written form to John King, Adjudicator at john.king@alaska.gov or by mail to the Division of Mining, Land and Water, Land Conveyances Section, P.O. Box 111020 Juneau, AK 99811, or send by fax: (907) 500-9011. **The deadline for public comment is 5:00PM, Friday, September 4, 2020.** Only persons from whom DNR DMLW Land Conveyances Section receives timely, written comments during the identified comment period will be eligible to file an appeal of the Final Finding and Decision.

The postmasters in the following communities will be requested to post the public notice per AS 38.05.945: City of Craig, City of Klawock, and City of Hydaburg. The public notice is available on the Alaska Online Public Notice System at: <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx>. Additionally, the public notice will be sent to the Sealaska Corporation, Central Council of the Tlingit and Haida Indian Tribes of Alaska, Craig Tribal Association, and Shaan-Seet, Incorporated.

For assistance in obtaining the documents by an alternative method, to request auxiliary aids, services, or special accommodations, contact DNR's Public Information Centers on State work days, Monday through Friday, between 10AM and 5PM in Anchorage at 907-269-8400, Fairbanks at 907-451-2705, or the Southeast Land Office in Juneau at 907-465-3400 (TTY for the hearing impaired for all locations: 711 for Alaska relay or 800-770-8973), or go to <http://dnr.alaska.gov/commis/pic/> for additional contact information. Individuals who require special assistance must request assistance from the Public Information Center in Anchorage no later than 4:00 PM, Friday, August 28, 2020

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

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

Attachment A: Parcel Map

Anadromous Fish Streams



PLSS Section Grid



Municipal Tideland



Attachment A



GRAPHIC ILLUSTRATION ONLY
Source documents remain the official record. Please refer to the Land Administration System (LAS) casefile for more detailed information on specific cases.
The State of Alaska makes no expressed or implied warranties (including warranties of merchantability and fitness) with respect to the character, function, or capabilities of this product or its appropriateness for any user's purposes. In no event will the State of Alaska be liable for any incidental, indirect, special, consequential or other damages suffered by the user or any other person of entity whether from use of the product, any failure thereof or otherwise, and in no event will the State of Alaska's liability to you or anyone else exceed the fee paid for the product.