

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

COMMISSIONER'S DECISION
ADL 109129

Conveyance of State Land to the City and Borough of Juneau
SLA 2022, Ch. 13, § 4 (HB 349)

I. Actions

Commissioner's Decision: Conveyance of State Land as a Noncompetitive Sale to the City and Borough of Juneau - ADL 109129

Attachment A: Affidavit Acknowledging Conditions of Land and Releasing the State from Related Liability.

Action, Transfer of Property: Pursuant to SLA 2022, Ch. 13, § 4 (House Bill 349), the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) as a matter of law conveys all rights, titles, and interests to the land described below containing 3.55 acres, more or less, to the City and Borough of Juneau (CBJ), subject to the reservations described in AS 38.05.125 and the provisions of AS 38.05.127. The 3.55-acre subject parcel is located in downtown Juneau between Main Street, Egan Drive, Willoughby Avenue, and West Third Street within Section 23, Township 41 South, Range 67 East, Copper River Meridian.

II. Authority

SLA 2022, Ch. 13, § 4, titled "Conveyance of State Land to the City and Borough of Juneau" signed into law June 29, 2022, requires DNR to convey the subject parcel to CBJ. In addition to providing a legal description of the lands that must be conveyed by DNR to CBJ, SLA 2022, Ch. 13, § 4 states:

The Department of Natural Resources shall, without cost, convey all rights, titles, and interests to the following parcels of land situated within United States Survey No. 7, Townsite of Juneau and Alaska Tidelands Survey No. 3, Juneau Recording District, First Judicial District, Juneau, Alaska, containing 3.55 acres of land, more or less, to the City and Borough of Juneau, subject to the reservations described in AS 38.05.125 and the provisions of AS 38.05.127

Therefore, under state law, DNR must convey these lands to CBJ subject to various reservations.

III. Additional Related Authorities

On August 29, 2022, the CBJ Assembly adopted Resolution No. 2999. Under Resolution No. 2999, CBJ agreed to accept the Telephone Hill lands. In doing so, CBJ also agreed that the SLA 2022, Ch. 13, § 4 land conveyance releases and satisfies any of the state's outstanding debt to CBJ related to these lands. CBJ Resolution No. 2999 (August 29, 2022); available at: https://juneau.org/index.php?gf-download=2022%2F08%2FRes2999_Telephone_Hill_Acquisition_Final.pdf&form-id=22&field-id=11&hash=e8764b34574195f066d1a3396f56f7277ba9cfe215335d58c523181b3cd7459b (accessed on December 14, 2022).

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IV. Administrative Record

The project file for Alaska Division of Lands (ADL) 109129 constitutes the administrative record for this action. Also incorporated by reference is:

- SLA 2022, Ch. 13, § 4 (HB 349).

V. Location

The subject parcel is located within DNR's Southeast Region in downtown Juneau between Main Street, Egan Drive, Willoughby Avenue, and West Third Street, within Section 23, Township 41 South, Range 67 East, Copper River Meridian.

USGS Map Coverage: Juneau B-2

Platting Authority: City and Borough of Juneau

Regional Corporation: Sealaska Corporation

Federally Recognized Tribe: Central Council of Tlingit and Haida Indian Tribes of Alaska, Douglas Indian Association

Village Corporation: Goldbelt Corporation

VI. Legal Description

All of Tract "A", Downtown Transportation Center Plat, recorded April 2, 2009 as Plat Number 2009-11, Juneau Recording District;

Lots 7 and 8, Block 1, United States Survey No. 7, Townsite of Juneau;

Lots 1, 2, 3, 6, 7 and 8, Block 6, United States Survey No. 7, Townsite of Juneau, Except therefrom that portion of Lot 8 as per Book 338, Page 284 and more particularly described as follows:

Beginning at the West corner of Lot 8; thence South 41 degrees 17 minutes East, along the southwest line of Lot 8, a distance of 14.13 feet; thence northerly a distance of 20.0 feet, more or less, to a point on the northwest line of Lot 8, said point being North 48 degrees 42 minutes East a distance of 14.13 feet from the point of beginning; thence South 48 degrees 43 minutes West, along the northwest line of Lot 8, a distance of 14.13 feet to the point of beginning;

Lots 3, 4, 5 and 6, Block D, United States Survey No. 7, Townsite of Juneau and A tract of land as per Book 301, page 825, more particularly described as follows: Beginning at the North corner of Lot 5; thence South 48 degrees 43 minutes West, on the Northwest lot line a distance of 50.0 feet to the west corner of Lot 5; thence North 41 degrees 17 minutes West a distance of 20.0 feet; thence North 48 degrees 43 minutes East a distance of 61.58 feet; thence South 36 degrees 44 minutes East a distance of 120.78 feet; thence South 48 degrees 43 minutes West a distance of 2.0 feet to the east corner of Lot 5; thence North 41 degrees 17 minutes West along the northwest lot line, a distance of 100.40 feet to the point of beginning.

Except therefrom the southwest 8.94 feet of Lot 6, Block D, said survey;

Lots 2, 3, 4, 5, 6 and 7, Block E, United State Survey Number 7, Townsite of Juneau, Except therefrom that portion of Lots 2, 3 and 4, as per Book 230, Page 660 and more particularly described as follows:

Beginning at the West corner of said Lot 2; thence North 48 degrees 43 minutes East along the northwest line of Lot 2, a distance of 18.06 feet; thence South 82 degrees 25 minutes 10 seconds East a distance of 149.86 feet to a point on the southeast line of said Lot 4; thence

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South 48 degrees 43 minutes West a distance of 17.83 feet to the most southerly corner of Lot 4; thence North 76 degrees 36 minutes West a distance of 40.30 feet to an angle point on the south line of Lot 3, said point being Corner 10 of Alaska Tidelands Survey No. 3; thence North 84 degrees 38 minutes West a distance of 110.0 feet to the point of beginning.

Also except therefrom that portion of Lot 7 as per Book 301, Page 354, more particularly described as follows:

Beginning at the South corner of said Lot 7; thence North 52 degrees 42 minutes West along the southwest line of Lot 7 a distance of 66.90 feet, said line being coincident with the boundary line between U.S. Survey No. 7 and Alaska Tideland Survey No. 3; thence North 43 degrees 23 minutes East a distance of 7.87 feet; thence South 52 degrees 42 minutes East a distance of 50.40 feet to the southeast line of Lot 7; thence South 48 degrees 43 minutes West along said lot line a distance of 18.06 feet to the point of beginning.

Containing 3.55 acres of land, more or less, all within said United States Survey Number 7 and Alaska Tidelands Survey Number 3, Juneau Recording District, First Judicial District, Juneau, Alaska.

VII. Title

Information from Title Report (RPT) No. 22169, current as of December 2, 2022, indicates the State of Alaska received title to the subject parcel on November 1, 2022, under State of Alaska Quitclaim Deed (Assignment of Management Authority), Project Name: JNU-Telephone Hill Property, dated October 26, 2022, and accepted November 1, 2022, recorded as Document No. 2022-004521-0. Also incorporated are RPT No. 20462 Other State Land (OSL) No. 1243, RPT No. 20464 OSL 1255, RPT No. 20465 OSL 1254, RPT No. 20466 OSL 1253, RPT No. 20467 OSL 1252, RPT No. 20469 OSL 1250, RPT No. 20472 OSL 1247, RPT No. 20473 OSL 1246, and RPT No. 20474 OSL 1245. No third-party interests were identified.

State Reservation of Title:

Retention of and Access to Mineral Estate: In accordance with *Section 6 (i) of the Alaska Statehood Act* and *AS 38.05.125 Reservation*, the State retains ownership of all oil, gas, coal, ore, minerals, fissionable material, geothermal resources, and fossils that may be in or upon the land that it sells. This retention is for all minerals, including both locatable minerals (such as gold, copper, silver, etc.) and leasable minerals (such as oil, gas, coal, etc.)

The State and its successors reserve the right to enter onto the land for the purposes of exploring for, developing, and producing these reserved mineral resources. Access reserved to these retained interests is superior to any and all land uses. The State may also lease these retained interests to mineral developers or allow mining locations to be staked. However, *AS 38.05.130 Damages and Posting of Bond* also provides that the landowner will be compensated for damages resulting from mineral exploration and development.

Navigable Waters: Per *AS 38.05.126(b) Navigable and Public Waters*, "...the State has full power and control of all of the navigable or public water of the State, both meandered and unmeandered, and the State holds and controls all navigable or public water in trust for the use of the people of the State." This trust is in accordance with the principles of the Public Trust Doctrine, which are included in Article VIII, Section 14 of the

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Constitution of the State of Alaska and protected in the United States Constitution. It is vested in the title to this land, is not transferable, and the State's title to submerged lands under navigable waters cannot be relinquished by a transfer of the property. In holding with this concept, navigability determinations are made, and access will be reserved per *AS 38.05.127 Access To and Along Public and Navigable Water*. For more information, see **Section IX. Access, including Access To and Along Public or Navigable Water** of this document.

There are no waterbodies located on this site, and the proposed use of the parcel (described below) will not impact any nearby waterbodies.

Native Interest: The subject lot is within the boundaries of Sealaska, Inc. native regional corporation. There are no Native interests identified within this parcel.

Other Conflicts or Pending Interest: CBJ has agreed to take the lands, consistent with state law, and thus do so subject to any potential third-party interests. However, DMLW has identified one third-party interest affecting the subject parcel:

The previous parcel owner, Juneau Motor Co., Inc., granted an easement to Alaska Electrical Light and Power Company on October 4th, 1972, within the subject parcel in lot 19, block 75. The easement document mentions an attached sketch indicating the location of the easement, but no sketch was recorded with the easement document. The location and use of the easement are unknown. If this easement is in use, this is an unauthorized easement.

VIII. Background

The subject parcel is located within the original Juneau Townsite in an area referred to as "Telephone Hill." The location received its name because the owner of Juneau and Douglas Telephone Company built his office on the hill and connected the first telephone lines across the Gastineau Channel in 1883.

In 1971, the Alaska State Legislature authorized funds for purchasing properties surrounding Telephone Hill for state office buildings as well as a possible location for a new Capitol building. CBJ showed interest in the lands being developed.

In 1984, the State of Alaska and CBJ entered into a cooperative use agreement (CUA) addressing the future development of the Telephone Hill property for the Juneau Government Center. The CUA stated it was "in the public interest that [their] plans for the development of public facilities be coordinated and integrated." Under the CUA, CBJ agreed to help finance the acquisition of the Telephone Hill lands. CBJ would then be eligible to develop some of the Telephone Hill lands. Under the CUA, the state had to repay CBJ's investment.

With the CUA in place, in 1984, the State of Alaska, Department of Transportation and Public Facilities (DOT&PF) acquired 15 private parcels through *AS 35.20 Acquisition and Disposition of Property* and DOT&PF's authorities to acquire property for the construction and operation of public facilities. Acquisition of these properties totaled approximately \$4.6 million. Consistent with the CUA, CBJ contributed \$2 million to the State's \$4.6 million payment for the Telephone Hill properties. Structures on four properties were demolished, and a parking lot was constructed for the Legislative Affairs Agency.

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With other buildings renovated near the capital building, the Telephone Hill lands were never meaningfully developed for the Juneau Government Center. Therefore, from 1984 to 2008, DOT&PF never developed the Telephone Hill lands. The state also never repaid any portion to CBJ for its \$2 million investment; thus, interest accrued on that \$2 million investment.

As a result, in 2008 the CUA was amended to address the state's outstanding debt to CBJ. The amendment capped the state's outstanding debt to CBJ at \$6.4 million and allowed CBJ to lease a portion of the subject parcel to develop, construct, and operate a public parking garage and transit facility with the intent that the State would work with CBJ to convey ownership at a future date. Under the amended CUA, the state agreed to lease the lands for 60 years, at which point the state's debt to CBJ would be forgiven. Lastly, the amended CUA provided that should the leased lands be conveyed to CBJ at any time, the state's debt would be forgiven.

The subject parcel currently contains seven properties ranging from single-family units to a 5-unit apartment building, the oldest built in 1882. LCS has reviewed criteria for property evaluation under the National Register of Historic Places (NRHP), Alaska Heritage Resources Survey cards for the Telephone Hill properties, and the 1984 Telephone Hill Historic Site and Structures Survey Juneau, Alaska 1984, and has determined that none of the properties likely fit the criteria required to be listed in the NRHP. The seven residential units were leased through a property manager until DOT&PF became landlord-in-fact in 1997. The DOT&PF Right of Way Section managed the leases until the 1998 establishment of the Telephone Hill Neighborhood Non-Profit Management Corporation (THNMC), the lessee and tenant-operated property management association. THNMC has been responsible for collecting rent and ensuring that needed repairs were completed. The units range from poor to average condition. Several units have significant maintenance issues, such as a leaking roof, furnace, and drainage issues in the basement. At least one building is not compliant with municipal code as it lacks an ingress/egress window.

On July 29, 2020, LCS received an application from CBJ for a Public and Charitable Use purchase of state land pursuant to *AS 38.05.810 Public and Charitable Use*. This application was serialized with DNR case number ADL 109129. Adjudication of the application began but was halted when the 32nd Alaska State Legislature began considering the conveyance of the subject parcel through legislation.

On May 18, 2022, the Senate adopted Amendment 3 to the Committee Substitute for House Bill 349, which directs DNR to convey to CBJ, without cost, all rights, titles, and interests to the subject parcel. HB 349 passed both houses and was signed into law on June 29, 2022. Amendment 3 of HB 349 had an effective date of October 1, 2022. ADL 109129 remains the case file for this conveyance.

On July 28, 2022, DOT&PF issued a No Longer Necessary Decision under *AS 35.20.070* – and consistent with SLA 2022, Ch. 13, § 4 – stating that the agency no longer needed to retain the subject parcel in anticipation of the construction of public facilities to support future functions of the Juneau Government Center. The decision directed that all administrative authority and management rights of the subject parcel be transferred to DNR for eventual conveyance to CBJ.

On July 29, 2022, DOT&PF issued a notice of termination of month-to-month tenancy to the THNMC stating that leases would be terminated effective August 31, 2022.

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On August 29, 2022, CBJ issued Resolution No. 2999 accepting the subject parcel from the State of Alaska at no cost. In exchange for receiving the subject parcel at no cost, resolution No. 2999 acknowledges that the State of Alaska, and its departments, satisfied any and all obligations originating from the \$2 million initial investment by CBJ, and CBJ releases and waives any current or future claim arising out of or related to the original \$2 million investment.

On November 2, 2022, consistent with AS 35.20.070, a Quitclaim Deed conveying ownership of the subject parcel from DOT&PF to DNR was recorded.

IX. Access, including Access To and Along Public or Navigable Water

Public Access: Legal and physical access to this parcel is via Main Street, Egan Drive, and West Third Street. This parcel is not accessible from any waterbodies.

Access To and Along Public or Navigable Waters: In accordance with AS 38.05.127 *Access To Navigable or Public Water*, DNR will determine if a water body is navigable or public and establish easements or rights-of-way as necessary to ensure unobstructed access to and along the body of water. Regulations dictating the creation of easements or rights-of-way under this statute include 11 AAC 51.035 *Determination of Navigable and Public Water*, 11 AAC 51.045 *Easements To and Along Navigable and Public Water*, and 11 AAC 53.450, *Buffer Strips, Reserved Areas, and Public Easements*.

Easements and Setbacks:

- Easement previously granted to Alaska Electrical Light and Power Company prior to the State of Alaska taking title. The location and use of the easement are unknown. If the easement is in use, this is an unauthorized easement;
- A 5-foot survey easement from the nearest practical point on the property boundary to control monuments within the parcel and an easement with a radius around the control monument, and as applicable, a 5-foot direct line-of-sight easement from the control station to an azimuth mark or other control monument;
- Additional reservations and/or restrictions required through the local platting authority.

Where appropriate, reservations and restrictions are depicted on the plat and described in plat notes.

X. Reservation of Mineral Estate

In accordance with section 6(i) of the Alaska Statehood Act and AS 38.05.125 *Reservation*, 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 *Damages and Posting of Bond* and other applicable statutes and regulations.

XI. Hazardous Materials and Potential Contaminants

In the Environmental Risk Questionnaire submitted with the previous Public & Charitable purchase application, CBJ identified asbestos contamination as possibly present in the residential properties within the subject parcel. In that application, CBJ stated it was willing to accept the property "as-is" and is aware of potential environmental contamination. Specifically, CBJ is aware that two contaminated sites within the immediate area have institutional controls placed on them. These sites are located at 204 Main Street and 333 Willoughby Ave. A leaking

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675-gallon underground fuel tank caused the contamination, and an 8,000-gallon underground fuel tank, respectively. CBJ is expected to inspect the subject parcel and familiarize itself with regard to the condition and quality of the land. DNR recognizes that there are potential environmental risks associated with development that may occur when public land is transferred outside of state ownership. The need to offer quality and accessible land to the public outweighs this risk.

The State of Alaska makes no representations and no warranties, express or implied, as to the presence or absence of hazardous substances, hazardous wastes, contaminants, or pollutants on the subject parcel. The State of Alaska does not assume any liability, and DNR requires that CBJ sign an affidavit releasing the State from liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, and for the remediation of the site should such substances ever be identified. CBJ, through the direction of the 32nd Alaska State Legislature in HB 349, recognizes the surrounding areas of identified contaminated sites and recognizes that the subject parcel is conveyed on an "as is" basis and in the condition as of the conveyance. See *Attachment A: Affidavit Acknowledging Condition of Lands and Releasing the State from Related Liability*.

XII. Survey

Preliminary Survey Determination #2020-08, dated October 21, 2020, from the DMLW Survey Section determined the subject parcel to be partially surveyed. Prior to conveying the land to another party, CBJ must complete an Alaska State Land Survey (ASLS) for the unsurveyed portion at its expense. This survey must be completed to state and CBJ standards, approved by the local platting authority, and filed in the appropriate recording district.

XIII. Compensation

Per SLA 2022, Ch. 13 § 4, the subject parcel will be conveyed to CBJ without cost. However, pursuant to CBJ Resolution No. 2999, with the conveyance of the above-described lands, CBJ forgives the State's remaining debt related to the Telephone Hill property.

XIV. Stipulations

The following condition will be imposed upon the transfer of equitable title. The conveyance cannot be completed until this condition has been satisfied.

1. As a condition of the conveyance, CBJ must sign an affidavit acknowledging the condition of the land and releasing the State from liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants and for the remediation of the site should such substances ever be identified.

XV. Public Notice

DNR will distribute this decision via State of Alaska Online Public Notices as well as Land Sales Public Notices on the DNR DMLW website.¹

XVI. Decision

SLA 2022, Ch. 13, § 4 mandates DNR to convey the above-described land to CBJ. Because this conveyance has been mandated by state law, the legislature and governor have determined it is in the best interests of the state to convey the above-described real property to CBJ.

¹ Article VIII, § 8 of the Alaska Constitution states, "No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law."

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However, under SLA 2022, Ch. 13, § 4, DNR is required to convey these lands subject to reserving the mineral estate under AS 38.05.125 and reserving any access under AS 38.05.127. DNR's decision here complies with state law because it confirms that the conveyance of these lands to CBJ is subject to AS 38.05.125 and AS 38.05.127. Public notice of this conveyance has also been provided. Therefore, DNR's decision to convey these lands complies with state law and the Alaska Constitution.

Signature on file

December 27, 2022

Approved by: Vasilios Gialopsos
Commissioner (Acting)
Department of Natural Resources
State of Alaska

Date of Signature

Request for Reconsideration

An eligible person affected by this decision may request reconsideration to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any request for reconsideration must be received by the Commissioner's Office within twenty (20) calendar days after issuance of the decision under 11 AAC 02.040. The Commissioner may order or deny a request for reconsideration within thirty (30) calendar days after issuance of the decision. If the Commissioner takes no action on a request for reconsideration within thirty (30) days after issuance of the decision, the request for reconsideration is considered denied. The Commissioner's decision on reconsideration, other than a remand decision, is a final administrative order and decision of the department. An eligible person must first request reconsideration to the Commissioner before seeking relief in superior court. The Alaska State Courts establish its own rules for timely appealing final administrative orders and decisions of the department.

Reconsideration may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. Reconsideration must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$200 under the provisions of 11 AAC 05.160(a)-(b). A .pdf or print copy of 11 AAC 02 may be obtained by contacting Erik Fossum via phone at (907)-269-8429, via email at erik.fossum@alaska.gov, and is also available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.