

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

FINAL FINDING AND DECISION

Submerged Land Conveyance to the City and Borough of Yakutat

ADL 422301

AS 38.05.035(e), AS 38.05.825

RELATED ACTIONS:

None

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) dated May 7, 2025. The PD (attached) has received the required public review.

I. Recommended Actions

The State of Alaska, Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) recommends conveying 4.6 acres, more or less, of state-owned submerged lands within the Yakutat Small Boat Harbor as described in the ADL 422301 PD, pursuant to AS 38.05.825 Conveyance of tide and submerged land to municipalities to the City and Borough of Yakutat (CBY).

There are no related actions with this decision.

II. Authority

DNR has the authority under AS 38.05.825 Conveyance of tide and submerged land to municipalities, to convey state-owned 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 Leases for shore fisheries development; account; 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.

III. Public Participation and Input

Pursuant to AS 38.05.945 Notice, public notice inviting comment on the PD for the primary proposed action was published and distributed in the following manner:

- Posted on the State of Alaska Online Public Notice website from May 7, 2025, to June 13, 2025, per AS 38.05.945(b)(3).
- Posted on the Public Notices page of the DNR DMLW Alaska State Land Sales website.
- Mailed to the City of Yakutat per AS 38.05.945(c)(1).
- Mailed to postmaster in Yakutat with a request to post for 30 days, per AS 38.05.945(c)(4).
- Mailed to the Sealaska Corporation, Yakutat Tlingit Tribe, Yak-Tat Kwaan Incorporated, Central Council Tlingit and Haida Indian Tribes of Alaska per AS 38.05.945(c)(2)-(3).
- Mailed to 182 neighbors and landowners in the vicinity of the project and within the City of Yakutat, per AS 38.05.945(b)(3)(D).
- Emailed notification to state legislators, DNR Commissioner's Office and DMLW Director's Office.

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The public notice stated that written comments were to be received by 4:30 PM June 13, 2025, to ensure consideration and eligibility to appeal. For more information, refer to the attached PD.

IV. Summary of Comments

DNR DMLW LCS received no comments during the posted public notice period.

V. Modifications to Decision and/or Additional Information

The recommended action has not been modified from the original proposed action described in the PD. Several technical corrections have been made between the PD and this FFD to clarify that the parcel recommended for conveyance is submerged land and not tideland, since the parcel is entirely below Mean Low Water. These corrections are limited to replacing references to “tideland” with references to “submerged land” to ensure consistent terminology throughout the document. No other changes have been made.

The Title Report No. 23597, which expires December 18, 2026, was received and no issues with the title information were discovered.

VI. Stipulations

If approved for conveyance, applicable conditions, restrictions, and reservations will be imposed upon the transfer of equitable title when the FFD is effective and on the final conveyance document, including but not limited to the following:

A. Conditions

1. Management authority for the approved subject parcel will be transferred to CBY when the FFD is effective. When approved, CBY may execute lease and permits prior to issuance of a state conveyance document in accordance with AS 38.05.825 Conveyance of tide and submerged land to municipalities. Applications for state leases or permits in the subject area that have not been adjudicated or issued will be closed.
2. All mineral-related permits, licenses, claims, and leases affecting the submerged lands proposed for conveyance, if any, will remain under the authority of the State.
3. Notification to the Alaska State Historic Preservation Office in accordance with AS 41.35.070(d) Preservation of historic, prehistoric, and archeological resources threatened by public construction is required upon discovery of historic, prehistoric, or archaeological sites, locations, remains, or objects.
4. A notice to proceed to survey will be issued if no appeals are received, or when appeals are resolved, after the issuance of the FFD. CBY must hire a surveyor, and the surveyor must apply to DMLW's Survey Section for Survey Instructions. CBY's survey must be approved by DMLW and the local platting authority, if any, as set forth in the Survey Instructions. Survey costs shall be borne by CBY.
5. CBY 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 Leases for shore fisheries development.

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B. Restrictions and Reservations

1. The approved submerged land conveyance is subject to 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. Pursuant to AS 38.05.125 Reservation, the mineral estate shall not be conveyed.
3. Further Subject to the terms and conditions of AS 38.05.825 Conveyance of tide and submerged land to municipalities, including the condition the grantee may lease the land, but may not sell it; ensure that reasonable access to public waters and tide and submerged lands is provided; title to the land conveyed under this authority reverts to the State of Alaska upon dissolution of the municipality and the grantee takes title to the tide and submerged lands subject to the rights of the public under the Public Trust Doctrine.

Recommendation and Approval of the Final Finding and Decision follow.

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VII. Final Finding and Decision

The Land Conveyance Section recommends proceeding with the action as described in the Preliminary Decision. This action is undertaken under relevant authorities. The public interest in retaining the proposed parcel in state ownership does not outweigh the municipal interest.


The findings presented above have been reviewed and considered. Public Notice has been accomplished in accordance with AS 38.05.945 Notice and comments received were considered. The project file has been found to be complete and the requirements of all applicable statutes have been satisfied. The action is consistent with constitutional and statutory intent for State-owned land and this action is undertaken under relevant authorities.



Recommended by: Mary Hermon
Natural Resource Specialist
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

1/8/2026
Date

Under the authority of the applicable statutes, it is hereby found to be in the best interest of the State of Alaska to proceed with the recommended action as described and referenced herein.



Approved by: Hannah Uher-Koch
Section Chief
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

1/8/2026
Date

Appeal Provision

A person affected by this decision who provided timely written comment or public hearing testimony on the preliminary decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of "issuance" of this decision, as defined in 11 AAC 02.040(c) and (d) and may be mailed or delivered to the 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. Under 11 AAC 02.030, appeals filed under 11 AAC 02 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) and (b).

If no appeal is filed by the appeal deadline, this decision goes into effect as a final order and decision on the 31st calendar day after issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court (11 AAC 02.020 (a) and (b)). 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
MUNICIPAL ENTITLEMENT

PRELIMINARY DECISION

ADL 422301

Proposed Tideland Conveyance to City and Borough of Yakutat

AS 38.05.035(e), AS 38.05.825

RELATED ACTIONS

None

PUBLIC COMMENT PERIOD ENDS 4:30 PM, FRIDAY, JUNE 13, 2025

I. Proposed Action

Preliminary Decision: City and Borough of Yakutat Tideland Selection – ADL 422301

Attachment A: Vicinity Map

Attachment B: Development Plan Narrative

Attachment C: Public Notice

Primary Proposed Action: The State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS), proposes to convey one parcel of State-owned tide and submerged land (herein 'tideland') to the City and Borough of Yakutat (CBY), pursuant to Alaska Statute (AS) 38.05.825 Conveyance of Tide and Submerged Land to Municipalities. The subject parcel is vacant and encompasses the area required to replace and expand the aging infrastructure of the CBY Small Boat Harbor within Shipyard Cove, totaling 4.6 acres, more or less. See *Attachment A: Vicinity Map* and *Attachment B: Development Plan Narrative* for a depiction of the project area.

This decision determines whether CBY's request for tide and submerged land meets the requirements for conveyance in accordance with AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities and under the Submerged Lands Act of 1953 and the Equal Footing Doctrine.

Proposed Related Actions: No related actions proposed.

Public Notice of Proposal: In accordance with AS 38.05.945 Notice, during a period of at least 30 consecutive days, the public will have the opportunity to submit written comment on this Preliminary Decision (PD).

See **Section XV. Submittal of Public Comments** and *Attachment C: Public Notice* for details on how to submit comment for consideration. If LCS moves forward with the proposal after consideration of timely, written comments, a Final Finding and Decision (FFD) will be issued.

II. Authority

DNR has the authority under AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities, to convey State-owned tide and submerged lands if, on preparation and issuance of a written finding, it is determined to be in the best interest of the State, as required by AS 38.05.035(e) Powers and Duties of the Director. Article VIII, Section 1 of the Constitution of the

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State of Alaska states, "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

III. Administrative Record

Tideland conveyance case file ADL 422301 constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Yakutat Area Plan (YAP, adopted April 1995, amended January 2004) and associated land classification files;
- Alaska Department of Fish & Game (ADF&G) Alaska Anadromous Waters Catalog & Atlas to the Catalog;
- Alaska Department of Environmental Conservation (DEC) Contaminated Sites Database;
- City and Borough of Yakutat *2023 Comprehensive Plan Update (November 2023)*; and
- Alaska Tidelands Survey (ATS) 1313, ATS 1511, and ATS 1609 and Tideland conveyance case ADL 107550.

IV. Scope of the Proposal

The scope of this proposal, under the statutes described in the preceding **Section II. Authority**, is limited and specific to the determination of whether it is in the State's best interest to convey the subject parcel to CBY under AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities. It also includes identifying any third-party interests, other interests of record, and stipulations necessary to ensure that statutory requirements have been met. This decision does not consider any future development or the effects of such development that may occur after the transfer.

V. Location

The selected tideland adds to the existing Yakutat Small Boat Harbor (Harbor) located in Shipyard Cove within the City and Borough of Yakutat. The Harbor is the community's main access point for Yakutat Bay and the Gulf of Alaska. The Harbor provides docking facilities for boats and float planes and has a launch ramp connected to the local road system.

<i>Geographic:</i>	Southeast Alaska
<i>Borough/Municipality:</i>	City & Borough of Yakutat
<i>Meridian:</i>	Copper River (C)
<i>Regional Native Corp.:</i>	Sealaska Corporation
<i>Federally Recognized Tribe:</i>	Yakutat Tlingit Tribe, Central Council of the Tlingit and Haida Indian Tribes of Alaska
<i>Village Corporation:</i>	Yak-Tat Kwaan Incorporated
<i>USGS Map Coverage:</i>	Yakutat Quadrangle (1:250,000): Yakutat C-5

VI. Legal Description

That portion of State Tidelands within the NE1/4 of Protracted Section 24, Township 27 South, Range 33 East, Copper River Meridian; located North of Alaska State Tideland Survey No. 1609, North of Tract B of Alaska Tideland Survey No. 1511, and West of Alaska Tidelands Survey No. 1313; containing approximately 4.6 acres, more or less.

VII. Title

The location of this application is well below the elevation of Mean High Tide, as indicated in Alaska Tidelands Survey (ATS) 1313, ATS 1511, and ATS 1609; these surveys are between

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this application and the shores of Shipyard Cove. This indicates that the State received title to the tidelands and submerged lands at statehood through the Submerged Lands Act of 1953, and the cloud on title was cleared through a Quiet Title Disclaimer (QTD) from the U.S. Department of Justice and U.S. Forest Service as part of the Glacier Bay Decision (Original 128). A copy of the QTD is available within the Stikine River Recordable Disclaimer of Interest file. A Title Report has been requested for the parcel covered by this decision. As of the issuance date of this decision, the report remains outstanding; however, to avoid delaying the issuance of this decision, a careful review of the area was completed to identify title issues associated with this tideland. Any title actions identified by the outstanding title report and omitted from this decision will be incorporated into the Final Finding and Decision and addressed accordingly.

State Reservation of and Access to Mineral Estate: In accordance with Section 6(i) of the Alaska Statehood Act and AS 38.05.125 Reservation [of Rights to Alaska], the State retains ownership of the mineral estate that may be in or upon the tideland that it sells. This retention is for all minerals, including 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 upon the tideland 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 surface 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 land estate owner will be compensated for damages resulting from mineral exploration and development.

Navigable Waters: Yakutat Bay is a navigable body of water. 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 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 XI. Access, Including Access To and Along Public or Navigable Water.**

Other Conflicts or Pending Interest: None.

VIII. Background and Discussion

The City of Yakutat was formed in 1948. In 1992, the City of Yakutat was dissolved, and the City and Borough of Yakutat was incorporated. Yakutat is isolated among the lowlands along the Gulf of Alaska, 225 miles northwest of Juneau and 220 miles southeast of Cordova. It is at the mouth of Yakutat Bay, one of the few refuges for vessels along this stretch of coast. Its boundaries are the Canadian border to the north, Cape Suckling to the west, and Cape Fairweather to the east. CBY is within and surrounded by the Tongass National Forest, Wrangell St. Elias National Park and Preserve, and Glacier Bay National Park and Preserve.

CBY operates the Yakutat Small Boat Harbor. The Borough Assembly signed Resolution No. 23-400 on April 20, 2023, in favor of applying for and receiving the Port Infrastructure Development Program Grants for the purpose of providing the match for the States Harbor & Facilities Grant to replace and expand the aging infrastructure of the CBY Small Boat Harbor

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within Shipyard Cove. The Borough Assembly signed Resolution 24-10 in favor of acquiring the tidelands under AS 38.05.825(a) Conveyance of Tide and Submerged Land to Municipalities.

Other submerged lands within Shipyard Cove surround the subject parcel and are currently used for navigation and access to the Yakutat Small Boat Harbor, a privately-owned dock, and privately-owned float houses. The city-owned tide and submerged lands located South of Alaska State Tideland Survey No. 1609, South of Tract B of Alaska Tideland Survey No. 1511, and East of Alaska Tidelands Survey No. 1313 of the subject parcel were conveyed in 2013 (ADL 107550). Alaska Tidelands Survey No. 1313 was originally surveyed as a tidelands lease issued to Leonard's Landing Lodge, Inc. in 1986 (ADL 103815). However, the management of Alaska Tidelands Survey No. 1313 was conveyed to CBY in 2007.

AS 38.05.825(a) Conveyance of Tide and Submerged Land to Municipalities 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. The municipality must apply for conveyance, the tide and submerged lands must be within the boundaries of the municipality, the use cannot unreasonably interfere with navigation or public access, the land may not be subject to a shore fisheries lease under AS 38.05.082 Leases for Shore Fisheries Development, the land classification must be consistent with or compatible with the proposed use, and the land must be required for a public or private development approved by the municipality. CBY has met the application requirements of the statute through the following:

- Public Interest - The public interest in retaining the lands within the subject parcel in State ownership does not outweigh the municipal interest in managing these submerged lands. The Borough plans to operate and maintain a facility that will be used by the public. LCS believes that there are no other overriding State interests in the subject parcel for conveyance; 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. An open channel for navigation will exist within the borough owned tidelands.
- Public Access - The proposed use would not unreasonably interfere with public access and is intended to improve public access.
- Application - CBY has submitted an application for conveyance.
- Shore Fisheries Leasing - The land is not subject to a shore fisheries lease.
- Land Classification - The management intent and classification in the YAP are consistent with the proposed action. The proposed action is consistent with the CBY Draft Comprehensive plan.
- Municipal Approval of Development - The City and Borough of Yakutat Assembly supports the proposed development and this tideland conveyance and passed Resolution No. 24-10.

IX. Planning and Classification

1. *Planning*: The location of the subject parcel falls within the 1995 Yakataga Area Plan (adopted April 1995, amended January 2004), Unit 8B and Subnit 8b-5, with designations of public use site recreation (RP1) and transportation (T). These designations convert to the classifications of Public Recreation Land and Transportation Corridor Land.

AS 38.05.825(a)(5) Conveyance of Tide and Submerged Land to Municipalities, 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

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proposed use of the land is consistent or compatible with a land use plan adopted by the municipality or the department.” The YAP states that the public use site recreation designation for the Small Boat Harbor at Shipyard Cove is intended to protect and enhance recreation access to marine waters. The management intent under Unit 8b-5 is to:

“Protect or enhance access and facilities for public recreation and to promote access through opportunities for expanding and upgrading the Small Boat Harbor in response to needs of inter-regional and intra-regional marine transportation. All activities will, to the extent feasible and prudent, avoid significant adverse impacts to the access and recreation uses.

Promote access through opportunities for expanding and upgrading the small boat harbor in response to the needs of inter-regional and intra-regional marine transportation. All activities will avoid significant adverse impacts to opportunities for access and facilities related to the Small Boat Harbor and float plane dock.”

The management intent specified within the YAP is consistent with the current and proposed future maritime activities along the shoreline. LCS finds that the classifications of Public Recreation Land and Transportation Corridor Land, as set forth in the YAP, will fulfill the requirement of AS 38.05.825(a)(5) Conveyance of Tide and Submerged Land to Municipalities.

2. *Land Use Classification:* The YAP designations for Unit 8b-5 correspond to the classifications of Public Recreation Land and Transportation Corridor Land.
3. *Local Planning:* CBY has made available their 2023 Comprehensive Plan (Plan) dated November 2023. Plan objectives related to Economic Stability & Opportunity (ESO) and Infrastructure & Amenities (IA), Objectives ESO 3.4 and IA 3.6, identify that top priority projects and activities based on community input include improvements to the Small Boat Harbor. This includes expanding and improving marine services in the small boat yard and harbor, as well as improvements to the small boat harbor, including the structural integrity of decking. CBY wishes to improve local transportation between neighborhoods and community destinations by providing marine facilities to support local and visitor transportation. CBY seeks to expand and improve services at the Small Boat Harbor to meet the needs of economic activities and business ventures. The Plan describes a *‘Working Waterfront to provide public access to waterfront and water-based activities, including harbors, boat launches, recreational boating, and other public waterfront uses. Public access to the waterfront through pedestrian linkages and open space is encouraged while avoiding potential conflicts with active industries. A vibrant waterfront is critical for businesses, locals, and visitors.’* The land is adjacent to the existing CBY-owned tidelands classified for waterfront development and prioritized for water-dependent commercial, industrial, and harbor uses per CBY's 2023 Comprehensive Plan. The intended use for this land is an extension of this compatible land use.

X. Traditional Use Findings

The subject tideland is located within CBY and a traditional use finding is therefore not required pursuant to AS 38.05.830 Land Disposal in the Unorganized Borough. However, information on current or traditional use is welcomed and can be given during the public comment period. **See the Section XV. Submittal of Public Comments** and *Attachment C: Public Notice* for details on how to comment.

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XI. Access, Including Access To & Along Public or Navigable Waters

The parcel is accessible by land via Mallott Avenue, a paved one-lane road through town and by boat or float plane via Shipyard Cove, a navigable water body. The parcel is adjacent to uplands owned primarily by CBY as well as some private ownership. Pursuant to AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities, the conveyance of tidelands cannot unreasonably interfere with public access and the municipality must provide reasonable access to public waters and tidelands.

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. Shipyard Cove has been determined to be a navigable water body.

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

XII. Hazardous Substances and Contaminations

Based on review of the Alaska Department of Environmental Conservation's (DEC) list of Contaminated Sites, no hazardous material or contamination from hazardous material is known to affect the subject parcel.

CBY is expected to inspect the subject tideland to ascertain the quality and condition of the tideland. 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 tideland proposed for conveyance to the applicant. 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.

XIII. Survey

Upon DNR approval for the conveyance of the parcel, an Alaska Tideland Survey (ATS) performed by an Alaska Registered Land Surveyor under the direction of the DMLW Survey Section will be required at the applicant's expense. The survey will be required before issuing a state tideland patent. There is no requirement under AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities to appraise the land prior to conveyance.

A Preliminary Survey Determination dated May 30, 2024, was conducted by the DMLW Survey Section and has determined the subject parcel to be unsurveyed.

XIV. DMLW and Agency Review

Information and comments received from multiple sections within DMLW prior to and during agency review have been considered and included in the preparation of this PD. Agency review was conducted between June 4, 2024, through July 5, 2024. The intent of an agency review is to request comments from agencies that may be affected by a conveyance of tide and submerged land decision. Agencies are given the opportunity to evaluate and comment on the tideland selection to determine if the State should retain all or a portion of the selected tideland and, if so, provide supporting reasons for the requested action. Additionally, agencies are requested to identify any stipulations that may be appropriate if the tideland is to be conveyed out of state ownership.

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DNR DMLW LCS received brief comments of non-objection from the following agencies: DNR DMLW Southeast Regional Office, DNR DMLW PAAD, DNR DMLW RADS, DNR DMLW Survey Section, Alaska Department of Transportation and Public Facilities, and DNR Division of Oil and Gas.

DNR DMLW LCS Response: LCS appreciates your review of the proposal.

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

Alaska Department of Fish & Game (ADF&G) has reviewed this City and Borough of Yakutat (CBY) selection of a parcel of submerged land at the Yakutat Boat Harbor in Yakutat Bay containing approximately 4.6 acres. The land within the requested area is required for the replacement and future expansion of the existing city-owned Small Boat Harbor facilities. CBY seeks to replace and expand the aging infrastructure of the Small Boat Harbor to improve accessibility, public safety, and continue to provide the current level of public service and vessel moorage in Yakutat.

ADF&G has **no objections** to this CBY selection with the following comments:

- Marine mammal species listed under the Endangered Species Act (ESA) and protected by the Marine Mammal Protection Act (MMPA) have habitats overlapping with the proposed area, including Steller sea lions (western distinct population segment [DPS]) and fin, North Pacific Right Whale, sperm, and humpback whales (Mexico DPS). Additionally, other species, not listed under the ESA but similarly protected by the MMPA, inhabit the project areas (refer to links for National Marine Fisheries Service [NMFS] managed species link and US Fish and Wildlife Service [USFWS] species link). Despite this, the area is already impacted by human activity and is not designated critical habitat. Moreover, there are no nearby pinniped haulouts.
- The area under consideration is within the gray whale migratory route, recognized as a Biologically Important Area (BIA1), active during January, March, April, May, November, and December. However, this BIA is rated with a score of 1, indicating lower biological importance based on factors like abundance, density, spatial/temporal extent of use. Higher scores denote more concentrated or significant use.

Thank you for the opportunity to review and comment on this municipal tideland selection. Please do not hesitate to reach out with any questions. Additionally, we request a copy of the decision documents, when issued.

DNR DMLW LCS Response: LCS appreciates your response and the additional information. LCS will provide this information to CBY via this decision. LCS will provide a copy of any issued decisions documents to ADF&G and will reach out if any questions arise.

The following agencies or groups were included in the agency review, but no comment was received:

- U.S. Fish and Wildlife Service
- Alaska Conservation District
- Department of Environmental Conservation
- Office of Project Management and Permitting
- Alaska Mental Health Trust Land Office

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- Department of Natural Resources
 - Division of Forestry & Fire Protection
 - Division of Geological and Geophysical Surveys
 - Division of Parks and Outdoor Recreation – Office of History and Archaeology

XV. Submittal of Public Comments

See *Attachment C: Public Notice* for specific date and conditions

Pursuant to AS 38.05.945 Notice, LCS is issuing public notice for comment on this Preliminary Decision.

In accordance with AS 38.05.946(a) Hearings, a municipality or corporation entitled to receive notice under AS 38.05.945(c) Notice may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the Commissioner (or representative) shall attend the hearing. The Commissioner has discretion whether or not to hold a public hearing.

LCS will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the PD, additional public notice for the affected tidelands will be given. Reducing the amount of tideland offered and making minor changes to any of the proposals will not be considered significant changes requiring additional public notice.

If the proposal is approved and no significant change is required, the Preliminary Decision, including any deletions, minor changes, and summary of comments and LCS responses will be issued as a subsequent Final Finding and Decision without further notice.

Only persons from whom LCS receives timely, written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision. Upon approval and issuance of a Final Finding and Decision, a copy of the decision will be made available online at <http://landsales.alaska.gov/> and sent with an explanation of the appeal process to any party who provides timely written comment.

DNR is prepared to accommodate individuals with disabilities by providing auxiliary aids, services, or special modifications in order to participate in this review. Individuals who may need such assistance should contact DNR's Public Information Center. For more information, refer to the attached Public Notice.

**DEADLINE TO SUBMIT WRITTEN COMMENT IS
4:30 PM, FRIDAY, JUNE 13, 2025**

XVI. Stipulations

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 CBY 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 CBY when the FFD is effective. When approved, CBY may execute leases and permits prior to issuance of a state conveyance document in accordance with AS 38.05.825 Conveyance of Tide and

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Submerged Land to Municipalities. However, CBY may not lease the tidelands approved for conveyance for shore fisheries.

3. All mineral related permits, licenses, claims, and leases affecting the tidelands proposed for conveyance, if any, will remain under the authority of the State.
4. Notification to the Alaska State Historic Preservation Office in accordance with AS 41.35.070(d) Preservation of historic, prehistoric, and archeological resources threatened by public construction is required upon discovery of historic, prehistoric, or archaeological sites, locations, remains, or objects.
5. A notice to proceed to survey will be issued if no appeals are received, or when appeals are resolved, after issuance of the FFD. CBY must hire a surveyor, and the surveyor must apply to DMLW's Survey Section for Survey Instructions. CBY's survey must be approved by DMLW and the local platting authority, if any, as set forth in the Survey Instructions. Survey costs shall be borne by CBY.
6. The approved tideland conveyance is subject to the terms and conditions of AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities, including: 1) Grantee may lease the land, but may not sell it; 2) 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; 3) The municipality shall be required to ensure that reasonable access to public waters and tidelands is provided; 4) 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 Leases for Shore Fisheries Development; if the Commissioner determines that the lease is compatible with the municipality's use of the land; and 5) Title to the land conveyed under this authority reverts to the State upon dissolution of the municipality.
7. Pursuant to AS 38.05.125 Reservation, the mineral estate shall not be conveyed.
8. The approved tideland conveyance is subject to 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.

XVII. Discussion and Alternatives

The following alternatives were considered:

Alternative 1: Convey Subject Parcel

Approve the proposed conveyance of the 4.6-acre tide and submerged land parcel to CBY with management authority to be transferred when the Final Finding and Decision becomes effective. The subject parcel encompasses the area required for dock management and maintenance. This alternative meets the intent of AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities to convey tide and submerged land to municipalities where the municipality's interest in obtaining the subject parcel outweighs the public interest in retaining State ownership.

Alternative 2: Retain

LCS will reject and retain the tide and submerged land requested by CBY. This alternative would, in effect, preclude CBY's ownership of the tidelands considered to be important for their community development and access. This action would be inconsistent with the purpose of AS

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38.05.825 Conveyance of Tide and Submerged Land to Municipalities and inconsistent with the basis for the disapproval of a tideland conveyance request in that section of the statute. A tideland conveyance request can only be rejected when the State's interest outweighs that of the municipality, and there is no basis for such a determination.

For the aforementioned reasons, Alternative 1 is the preferred alternative.

Recommendation follows.

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XVIII. Recommendation and Preliminary Decision

LCS has determined that Alternative 1 is the preferred action and is concurrent with the intent and requirement of AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities. This Preliminary Decision for the proposed disposal of State lands described throughout this document and its attachments are consistent with the overall management intent for state-owned land. Under AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities, the State realizes no direct economic benefit, but further development of this parcel will serve the needs of the City and Borough of Yakutat. Facilitating community development activities in the borough indirectly provides economic benefit to the State by encouraging settlement and related economic activity. LCS believes that the proposed conveyance complies with the requirements of AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities, as discussed above. Unless public comment indicates that the parcel does not qualify for conveyance under AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities, 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 the completion of a new ATS for the area of ATS 251.

This Preliminary Decision, described above, represents the preferred alternative and has been reviewed and considered. After review and consideration of materials in this PD, 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 in accordance with AS 38.05.945 Notice.

After public notice, the subsequent review process may result in changes to the preferred alternative or disapproval of the proposed action altogether. A Final Finding and Decision will address any significant issues or concerns raised during the public review process.

Denise Wiltse

Prepare by: Denise Wiltse
Natural Resource Specialist 3
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

5/7/2025

Date

Hannah Uher-Koch

Approved by: Hannah Uher-Koch
Section Chief
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

5/7/2025

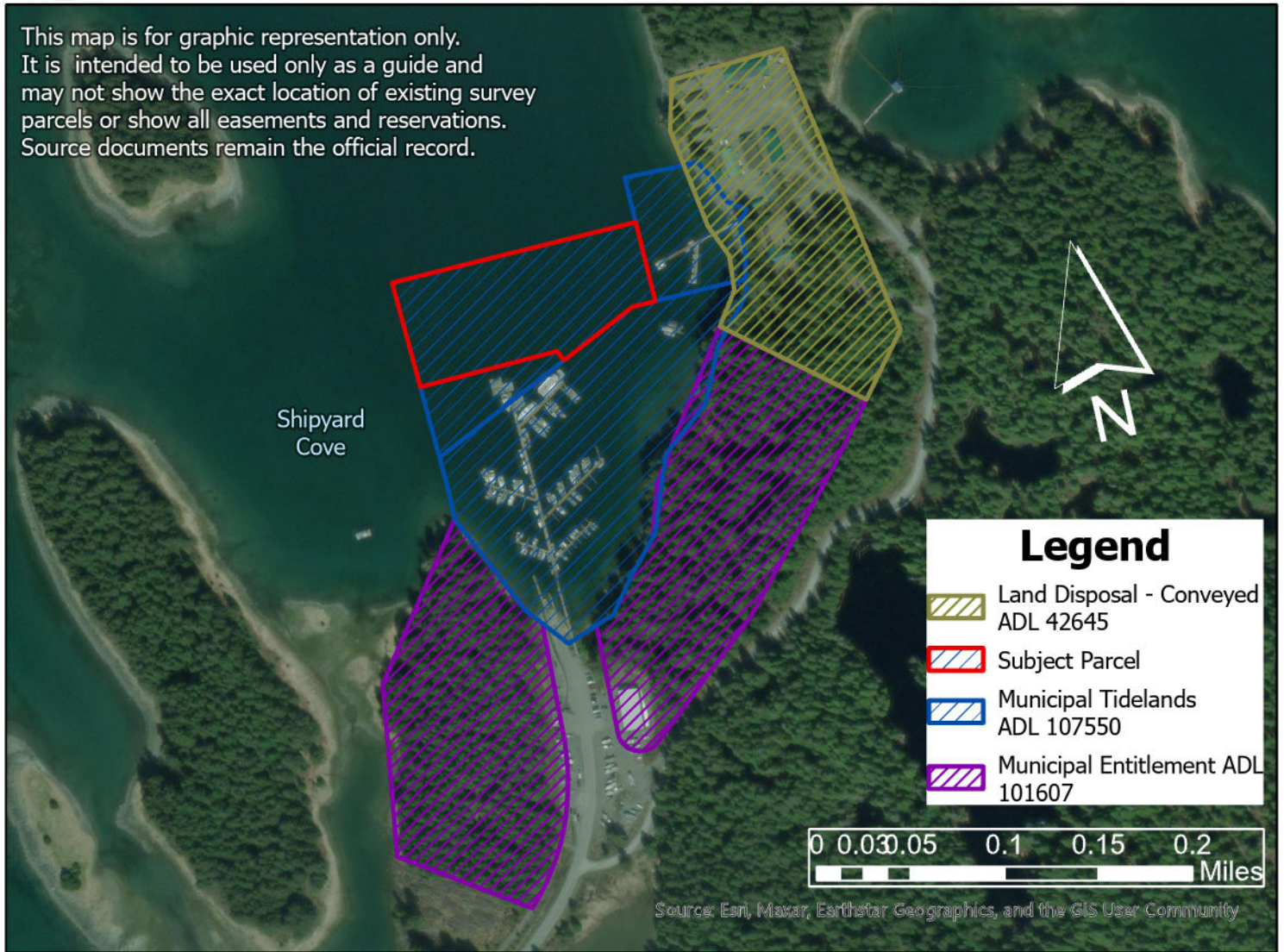
Date



**City & Borough of Yakutat - Small Boat Harbor
ADL 422301**

Attachment A: Vicinity Map
Municipal Tidelands Conveyance
Pursuant to AS 38.05.825

This map is for graphic representation only. It is intended to be used only as a guide and may not show the exact location of existing survey parcels or show all easements and reservations. Source documents remain the official record.

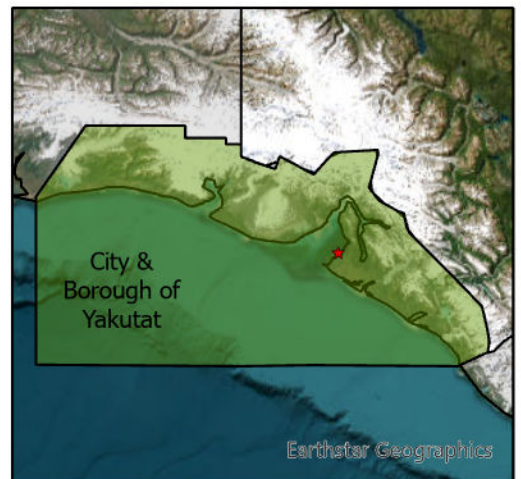


Section 24, Township 27 South, Range 33 East, Copper River Meridian

For more information contact:

Denise Wiltse
Department of Natural Resources
Division of Mining, Land and Water
Land Conveyance Section
Phone: 907-465-3511
Email: denise.wiltse@alaska.gov

Updated October 30, 2024





1/11/2024

Development Plan Narrative
for
Non-Competitive Sale of State Tidelands Per AS 38.05.825

The City & Borough of Yakutat (CBY) seeks to replace and expand the aging harbor infrastructure of the Yakutat Small Boat Harbor to improve accessibility, public safety, and continue to provide the current level of public service and vessel mooring in Yakutat, Alaska.

The Yakutat Small Boat Harbor is the sole boat harbor for recreational, subsistence and commercial uses in Yakutat and is the community's main access point for Yakutat Bay and the Gulf of Alaska. Portions of the existing float systems have been in service for approximately 60 years and have been found to be in serious condition. All floats have low freeboard and insufficient reserve flotation to support normal design loads. Typical useful life for timber float systems from that era ranges between 20-30 years depending on environmental conditions. Float degradation and cost of maintenance is anticipated to exponentially rise with continued use. The float system and gangways are in need of replacement to avoid development of hazardous conditions and to maintain the current level of service being provided to the recreational and commercial users of the harbor. Replacement of the existing gangways and floats will allow for continued safe use while meeting current criteria set by the Americans with Disabilities Act (ADA) and the States Organization for Boating Access (SOBA).

The revised layout of the new harbor floats will require the conveyance of 4.63 acres of state tidelands. The layout of the new harbor has been revised from that of the existing harbor configuration for multiple reasons:

- New stall and fairway layouts meet American Society of Civil Engineers (ASCE) and other accepted design guidelines.
- Floats have been moved offshore to prevent shallow water beneath inshore stalls during low tidal elevations. This is necessitated by glacial rebound which has occurred in Yakutat since original harbor construction.
- Moving floats offshore will allow adequate maneuvering space that does not currently exist for boat launching activities at the adjacent boat launch facility within Shipyard Cove.
- A longer 80-foot ADA compliant gangway will be installed to provide safe access to the harbor.
- Float reconfiguration will meet the current moorage needs of the community, based on the current harbor stall wait list.

The requested tidelands include sufficient area to allow for expansion of the Yakutat Small Boat Harbor in the future.

Project work will commence with the demolition of the existing Yakutat Small Boat Harbor to facilitate the installation of new harbor floats and infrastructure. All existing timber headwalk floats, mainwalk floats and finger floats will be removed in their entirety with the exception of the seaplane haulout ramp and work float which will be removed and salvaged for refurbishment and reinstallation. A small portion of the existing timber approach dock will also be removed. Existing harbor floats are primarily moored with timber piles and a small number of steel piles. Piles will be removed with a vibratory hammer to facilitate removal of the floats

Installation of new harbor infrastructure will begin at the existing approach dock and extend offshore. New floats will be mobilized to site on a materials barge and offloaded directly into the water. Individual float modules will be connected together into manageable sections for installation. Once floats are in position, permanent float piles will be driven with a vibratory hammer to the greatest extent possible to achieve the specified minimum embedment. Following float installation, the contractor will install all necessary float appurtenances such as electric, water, and fire suppression utilities as well as a new Americans with Disabilities Act (ADA)-compliant aluminum gangway to connect new harbor floats to the existing approach dock.

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

Attachment C: PUBLIC NOTICE

Requesting Input for a Proposed Conveyance Under AS 38.05.825
City & Borough of Yakutat Tideland Selection – ADL 422301

COMMENT PERIOD ENDS: 4:30 PM, FRIDAY, JUNE 13, 2024

The Department of Natural Resource (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) has prepared a Preliminary Decision (PD) for a proposal to convey approximately 4.6 acres of state-owned tide and submerged land (herein ‘tideland’) to the City and Borough of Yakutat (CBY), under *AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities*. Located within DNR’s Southeast Region, this tideland selection falls within the 1995 Yakataga Area Plan (Amended 1994), Unit 8b-5. LCS finds that the proposed conveyance is consistent with the requirements of AS 38.05.825, and that CBY’s interest in obtaining this state tideland outweigh the State’s interest in retaining it.

Pursuant to AS 38.05.945 Notice, the public is invited to comment on this PD which proposes to transfer ownership of state land to CBY. **The deadline for submitting public comment is 4:30 PM, Friday, June 13, 2024.** Only persons from whom LCS receives timely written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision (FFD). Comments must be received in writing to the Division of Mining, Land and Water, Attention: Denise Wiltse, at PO Box 111020, Juneau, AK 99811, by fax at (907) 500-9011, or by email at denise.wiltse@alaska.gov. If you have questions, call Denise Wiltse at (907) 465-3511.

To obtain a copy of the Preliminary Decision, go to <http://landsales.alaska.gov/> or <http://aws.state.ak.us/OnlinePublicNotices/>.

Following the comment deadline, LCS will consider the written responses received and may modify the decision to incorporate public comments in the FFD. Only persons who comment during this public comment period will be eligible to file an administrative appeal of the FFD. LCS will send a copy of the FFD to any person who comments on the PD. The FFD will include the appeal instructions. Please direct all inquiries or questions to Denise Wiltse at the above address, by email, phone, or fax.

DNR 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 DNR, Public Information Center in Anchorage between the hours of operation: 10:00 AM to 5:00 PM, Monday through Friday at TTY: 711 for Alaska relay or 800-770-8973 or go to <http://dnr.alaska.gov/commis/pic/>

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

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