

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

CITY AND BOROUGH OF JUNEAU  
ADL 107380  
FINAL FINDING AND DECISION  
AS 38.05.035(e)

This Final Finding and Decision by the Alaska Departments of Fish and Game (DFG) and Natural Resources (DNR) Division of Mining Land and Water (DMLW), together with the Preliminary Decision (PD) dated March 19, 2008, and any subsequent decisions comprise the record of decision for this proposed tideland conveyance under AS 38.05.825 to the City and Borough of Juneau (CBJ) for the purpose of expanding the Juneau International Airport to meet current safety requirements for the Federal Aviation Administration.

**Summary of Public Comment:**

- No public comments received.
- Public comments received; see Attachment 1.

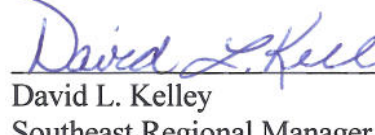
**Modifications to the Preliminary Decision:**

- The Preliminary Decision is not modified.
- The Preliminary Decision is modified as specified in Attachment 2.

**Approval:**

The preliminary decision referenced above, as modified herein, has been reviewed and considered. The casefile has been found to be complete and the requirements of all applicable statutes have been satisfied. It is the finding of the Regional Manager that it is in the best interest of the State to proceed with this conveyance under the authority of AS 38.05.

- AFFIRMED AS PROPOSED.
- MODIFIED AND AFFIRMED.

  
\_\_\_\_\_  
David L. Kelley  
Southeast Regional Manager

3/13/09  
\_\_\_\_\_  
Date

**DFG Affirmation of Approval:**

The final finding and decision has been reviewed and considered by DFG. I concur with DMLW's determination and find that the decision is consistent and compatible with AS 16.20.034 and affirm this decision.



Tom Lawson

Director

Division of Administrative Services

3/13/09  
Date

A person affected by this decision who provided timely written comment or public hearing testimony on this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received by April 2, 2009 and may be mailed or delivered to Tom Irwin, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501-3561; faxed to 1-907-269-8918; or sent by electronic mail to [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov). If no appeal is filed by that date, this decision goes into effect as a final order and decision on April 13, 2009. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 is enclosed.

Note: Because of the time sensitive nature of the filing of an appeal, appeals must be sent to the Commissioner of DNR rather than to either Commissioner. When considering an appeal, it will be considered by both, the Commissioner of DNR and the Commissioner of DFG, or their designee(s). The response to an appeal will be a joint response.

Attachment 1: Comments and Responses

Attachment 2: Modifications to Decision

**Final Finding and Decision**  
**ADL 107380**  
**Attachment 1**  
**Comments and Responses**

**Commenters:**

Comments were received from the following parties:

1. John Lovett, Lead Civil Engineer - Airports Division, Federal Aviation Administration - written
2. Wayne Regelin, President - Territorial Sportsmen, Inc. - written
3. Dave Palmer, Manager – Juneau International Airport – public hearing
4. Diane Mayer, Executive Director – Southeast Alaska Land Trust – public hearing
5. Tom Carson, Principal – Carson Dorn, Inc. – public hearing
6. Penny Miller – Honsinger Family Trust - written
7. Tom Schumacher, Habitat Biologist – ADFG Division of Sport Fish - written

**Synopsis of Comments (full set of comments included for reference as attachment 1-A):**

**Comment #1 – Federal Aviation Administration (FAA):**

In order for the FAA to administer the funding to CBJ for this project under the FAA’s Airport Improvement Program, certain assurances are required.

“One of the main requirements for this construction grant funding is that the City and Borough of Juneau (CBJ) have sufficient land interest to their airport lands. ... Title U.S.C., Section 47106(b)(1) states that no project for airport development may be approved by the Secretary until the Secretary is satisfied that the sponsor, a public agency, or the United States Government holds good title to the areas of the airport ....”

“The proposal and conditions by Alaska Department of Fish and Game (DFG) and the Division of Mining Land and Water (DMLW) to not convey the subject lands to CBJ until all your conditions of full mitigation and approval of all land purchases are accomplished clearly encumbers the title to the airport property. These conditions are not consistent with FAA grant assurances. These proposed requirements and stipulations are of great concern to the FAA and will have to be modified to allow this construction to proceed. The CBJ will be required to demonstrate that they have clear title to their airport property with no encumbrances.”

## **Response to FAA:**

The specific concerns of FAA primarily result from the PD Planning and Classification section, Mitigation subsection, Condition three, which addressed DNR and DFG concerns that the full acreage taken out of the refuge for airport purposes would not be replaced. In this Final Decision, the Real Estate Contingency Agreement (RECA), Attachment 2-B and described below, replaces Condition 3. The RECA directs that if SEAL Trust does not provide the total required replacement land by the five year expiration date of the early entry permit, the deficit will come from existing CBJ airport land.

The subject parcels are Parcel 1 (2.06 acres) at the east end runway and Parcel 2 (2.70 acres) at the west end runway. See diagrams titled "Revised Conveyance Diagrams" (attachment 2-A). Under AS 38.05.825, "good title" would be accomplished by the following means with the final step being issuance of a patent to CBJ. On the effective date of this final decision, management authority of the two parcels will be conveyed to CBJ. An actual patent cannot be issued until the subject parcels are surveyed in accordance with requirements that will be defined in the survey instructions. To allow the project to move forward prior to completion of the survey and issuance of patent, DMLW will issue a Land Use Permit (Early Entry for Tideland Conveyance Sites), commonly referred to as an Early Entry Permit (EEP). This permit will allow CBJ to construct their project and complete any other prerequisite requirements to issuance of a patent, such as the completion of the Alaska Tideland Survey (ATS). During the permit term, DMLW will issue survey instructions. Once the satisfactory survey is provided, DMLW will prepare a patent for these two parcels.

FAA comments reference that "CBJ will be required to demonstrate that they have clear title to their airport property with no encumbrances". This conveyance under AS 38.05.825 will be subject to six reservations as identified in the PD. DNR does not view these as "encumbrances" and in fact one specifically protects the interest of the FAA and states "A restriction on use of the land for airport expansion purposes only".

## **Comment #2 - Territorial Sportsmen Inc. (TSI):**

"We are particularly concerned with activities within the Mendenhall Wetlands State Game Refuge (MWSGR), as it provides a tremendous opportunity for local sports-men and -women, especially young people, to enjoy consumptive activities such as hunting and fishing." With this project, TSI is particularly concerned with the apparent lack of planning by CBJ and the FAA regarding adequate mitigation for the loss of land from the MWSGR. TSI was pleased that DMLW and DFG identified four conditions in the Preliminary Decision that addressed this issue.

TSI's position is that before any land from the refuge is conveyed to CBJ, the mitigation plan should be completed, and the refuge should receive title to the replacement land before any refuge land is conveyed to CBJ. It took about nine years on the environmental documentation. This being the case, is it not reasonable to allow the State a few more years to secure acceptable replacement land?

Although TSI can live with conditions 1-3 in the PD, TSI finds condition 3 far too complex. TSI is not confident that CBJ will carry through with replacing the land withdrawn from the refuge. It would be far simpler to complete acquisition of the accreted land before the actual “taking” of refuge land.

**Response to TSI:**

DFG and DNR agree with TSI’s position that the proposed refuge land lost to the expansion of the airport be replaced before conveyance of this land to CBJ. However, the source of the funding necessary to purchase the replacement land is from mitigation money allocated by FAA to the airport expansion project. To release this money, CBJ must first receive a “real property interest” in the two parcels of refuge land that are required for the expansion of the runway. Therefore, conveyance of these two parcels under AS 38.05.825 needs to occur first.

In reviewing comments received on the Preliminary Decision, DFG and DMLW realized that the proposed conditions to address this concern, especially condition three, were far too complex. To avoid this complexity, an alternative source of replacement land was identified that does not require the purchase of land using mitigation money. The land is CBJ land located within the airport boundary. This land located adjacent to the refuge is functioning wetlands, and is not subject to the airport expansion project. To assure that this land is available for replacement land if the SEAL Trust cannot purchase replacement land, the RECA, described below, was developed and executed. Figure 1 identifies the replacement parcel. This document serves as the replacement to proposed conditions 1-3 of the PD and eliminates their inherent complexities.

**Comment #3 – Juneau International Airport (JIA):**

The airport manager provided detailed comments for the City and Borough of Juneau at the public hearing held by DFG and DMLW on April 24, 2008. Also entered into the record at this hearing was the Record of Decision (ROD) for the Juneau International Airport Final Environmental Impact Statement and Section 4(f) Evaluation dated July 6, 2007.

Per AS 16.20.034(j), CBJ petitioned DFG and DMLW during public comment to make a joint finding of a superior public need or use for the airport project. This statute states “Notwithstanding the provision of (d) – (i) of this section, if the City and Borough of Juneau demonstrates to the Departments of Natural Resources and Fish and Game, jointly, that there is a superior public need for or use of the land to its use as a state game refuge, after public hearing and a finding by the departments supporting the determination that such a need or use exists or is required, the use shall be permitted. A final administrative order, ruling or determination by the departments adverse to the petition of the City and Borough of Juneau is subject to judicial review under AS 44.62.560-44.62.570”.

CBJ identifies the superior need or use as the work required to implement Alternative 5E in the July 2007 Record of Decision (ROD) of the FAA. The ROD states “The work requires

construction within the MWSGR on 2.06 acres on the east end and 11.58 acres on the west end of the runways. The scope of work is to build a runway safety area at each end of runway 8-26 to provide a 600' undershoot and 1000' overrun. Also included in the acreage is land to be filled to eliminate wildlife hazards." The Record of Decision documents that a specific hazard to aircraft exists and that the current runway safety area does not meet FAA standards. It further documents that filling certain areas on the west end of the runway area is required to eliminate wildlife hazards. CBJ's position is that the ROD demonstrates a superior public need, and, upon a finding by the departments supporting this determination, the use described in Alternative 5E shall be permitted. At the west end, CBJ is only seeking conveyance of the 2.7 acre runway safety area of the original 11.58 acres.

CBJ recognizes that "permitted" does not imply "good title" as required by FAA standards for obtaining clear title to land for runway safety areas (airport expansion). CBJ also recognizes, but may not agree, that condition 3 of the airport expansion policy in the MWSGR plan requires that all impacts to the refuge and refuge resources are fully mitigated through restoration and/or replacement. Since restoration could not be accomplished within the airport expansion parcels, the other option was to replace this land lost to the refuge (i.e., Parcels 1 and 2). To allow the activity and provide good title to CBJ, a mitigation plan was developed: the Juneau International Airport Large Project 2007 Mitigation Plan (JIALPMP) – revised 12/12/07. This plan provides more than \$5,300,000 in mitigation funds with more than \$1,000,000 dedicated specifically for replacing refuge land conveyed to JNU. This is the money that SEAL Trust will use to purchase replacement land including former refuge wetlands that have accreted to adjacent private upland owners.

CBJ asserts the mitigation subsection of the Planning and Classification section of the Preliminary Decision adds new conditions and costs above those identified in the JIALPMP and jeopardizes the implementation of this plan. CBJ requests that the JIALPMP be honored as developed without adding any of the new provisions in the Preliminary Decision.

**Comment #4 – SEAL Trust:**

The major concern in the SEAL Trust's comments is that the Preliminary Decision would negatively affect the ability of the SEAL Trust to fulfill its obligation to effectively acquire land under the mitigation plan. It will not allow the Trust to negotiate in a balanced manner. The decision shifts the negotiating power in the favor of the landowner and puts them in a position of being able to "name their price". The SEAL Trust is limited to fair market value.

**Comment #5 – Carson and Dorn:**

Carson and Dorn's comments were specific to the transfer of refuge land to the airport and to consider six items: 1) The transfer of land from the refuge to the airport is a first-time event for which there is no operational precedent; 2) The current event offers a rare opportunity to set precedent; 3) Any written document must be interpreted in order to be applied and in this case should call for us to maximize mitigation for wetlands lost to the airport projects; 4) The mitigation plan is a functional document and not a finished document and can accommodate

small adjustments to address acknowledged concerns; 5) ADF&G should resist the conclusion that all impacts to the refuge must be fully mitigated through restoration and/or replacement but are limited to areas within or adjacent to the refuge boundary; and should recognize that the mitigation plan gives the SEAL Trust maximum operating latitude; and 6) wetlands are not going away and the \$5.3 million in mitigation funds will allow SEAL Trust to move on purchases of these lands. We need to facilitate that work and not place constraints on it but to allow the most latitude for preserving wetlands.

### **Response to Commenters – Juneau International Airport, SEAL Trust & Carson and Dorn**

In the “Proposed Action” section of the PD, the acreage identified for conveyance was 13.64 acres. This included the two areas for the runway expansion areas, Parcel 1 (east end – 2.06 acres) and Parcel 2 (west end – 2.70 acres), and Parcel 3 (8.88 acres) for elimination of sites attractive to waterfowl on the west end runway. The PD identified that the entire 13.64 acres were for airport expansion purposes and the mitigation plan would be required to mitigate for the loss of this acreage at a Functional Capacity Unit (FCU) equivalent.

These comments prompted review of pertinent statutes as well as the management plan for the MWSGR. AS 16.20.034(i) states, in part, that the management plan adopted under (g) of this section shall include provisions under which the City and Borough of Juneau may acquire land, by sale, exchange or otherwise, for purposes of expanding the Juneau Municipal Airport. Under 5 AAC 95.520, the goals and policies of the Mendenhall Wetlands State Game Refuge Management Plan are adopted by reference. The plan specifically identifies a policy for airport expansion with the requirement to demonstrate four items, of which one is “that all impacts to the refuge and to refuge resources are fully mitigated through restoration and/or replacement.” The amount of acreage specifically required for airport expansion is not 13.64 acres but is 4.76 acres (2.06 acres for the east end of the runway and 2.70 acres for the west end of the runway). Therefore, based on this statute and regulation the replacement acreage is 4.76 acres.

The remaining 8.88 acres of the West End Wetlands Fill area are to be filled and graded for the purpose of eliminating a site that attracts waterfowl. CBJ is not required to replace this land as; it is not for the purpose of airport expansion. AS 16.20.034(h) states, in part, that if requested by the City and Borough of Juneau, the Departments of Fish and Game and Natural Resources shall assist in filling the ponds, lakes or other bodies of water that are adjacent to the existing airport runway and known to be used by waterfowl. The land will remain as refuge land managed by DFG but biologically it will no longer function as refuge habitat. If SEAL Trust provides the State of Alaska with suitable replacement land adjacent to the refuge boundary that has an FCU equivalent of the 8.88 acres (Parcel 3), CBJ may request and be granted title to the filled land.

The issues raised by SEAL Trust are valid. The conditions in the PD will put SEAL Trust in a difficult bargaining position with landowners. It places them in a position where the land owner could ask them to pay prices above fair market value due to the State’s restrictions in the PD. The replacement acreage is now significantly reduced and to address SEAL Trust’s concerns, CBJ offered to replace this acreage out of their airport land if the SEAL Trust cannot obtain replacement acreage. CBJ received title to a tract of tide and submerged pursuant to

AS 38.05.320 (now AS 38.05.820). This tract of land is about 340 acres and is identified as Alaska Tideland Survey (ATS) 716. Much of the boundary of this ATS borders the refuge and the land within the subject ATS is functioning wetlands. Land within ATS 716 would be an acceptable source for replacement land. Mitigation money would not have to be used to secure the required acreage. This would eliminate the State having a third party interest in SEAL Trust negotiations with other land owners.

Under AS 38.05.825, management authority for the Runway Safety Area parcels will convey to CBJ thirty one days after the signing of this Final Decision, unless an appeal is filed. If the decision is appealed, then the conveyance date will depend on the resolution of the appeal. The incorporation of the "Real Estate Contingency Agreement" (RECA) into this Final Finding and Decision assures that the land will be replaced by first allowing SEAL Trust a defined period to pursue purchases of parcels without the encumbrances of the PD. Secondly, CBJ will provide the replacement acreage if SEAL Trust cannot do so. The RECA establishes a reckoning date for conveyance of replacement land by Seal Trust that is tied into the early entry permit that DMLW will issue for the conveyance. Of the three conditions identified in the mitigation section of the PD, condition 1 will still apply: there will be a SEAL Trust Advisory Committee, on which both DFG and DMLW will have a seat. Conditions 2 and 3 are no longer applicable. CBJ will not have to provide a cash bond and the complexities of condition 3 are replaced by the RECA.

**Comment #6 – Honsinger Family Trust (HFT):**

HFT is in favor of the proposed changes in the PD in order for Juneau to have an airport that will comply with FAA regulations.

**Response to HFT:**

No response required.

**Comment #7 – DFG:**

Agency comments to the Airport Dike Trail Easement. This trail is among the most heavily used recreational trails in Juneau. The existing trail will be realigned but will still be on CBJ land and on refuge land to be conveyed to CBJ (Parcel 2). This trail is an important refuge access route. ADFG requests that an access easement be provided to the State along the entire length of this trail.

**Response to DFG on Access:**

The access trail on the west end, when rerouted, will not be entirely within the MWSGR as portions of the trail will still exist on CBJ land. The PD states that a 20-foot wide public access easement will be reserved across Parcel 2. This should not change, but it is recognized that the trail is an important refuge access route and should have additional protections over just a platted easement for a portion of the trail. CBJ recognizes the importance of this trail and in the



relocation of the mouth of Duck Creek a new parking area will be built for Dike Trail users.

DMLW agrees with DFG that CBJ should grant the State an easement for the trail in its entirety from the re-located parking lot to the traditional area where the trail meets the refuge on the south side. This easement should be granted to DFG but it will require CBJ to grant the easement. It is further recommended that when the as-built for the trail is platted on Parcel 2, that the as-built includes that portion of the trail on CBJ land (ATS 716). Therefore, if CBJ elects to grant DFG an easement, the as-built will be completed.

**Final Finding and Decision**  
**ADL 107380**  
**Attachment 2**  
**Modifications to Decision**

The Preliminary Finding and Decision (PD) for ADL 107380 dated March 19, 2008, a proposed conveyance to the City and Borough of Juneau (CBJ), is hereby modified as follows:

The Functional Capacity Unit (FCU) equivalent acreage to be replaced is reduced from 13.64 acres to 4.76 acres. The Southeast Alaska Land (SEAL) Trust will use mitigation money in accordance with the airport project mitigation plan to buy replacement acreage from appropriate landowners. If SEAL Trust cannot acquire this land, CBJ will replace the land with airport land from ATS 716. CBJ, ADF&G and DNR entered into a Real Estate Contingency Agreement (RECA) to ensure this occurs. The signed RECA is adopted as a modification to the Preliminary Decision and is incorporated into this Final Finding and Decision as attachment 2-B. The RECA 1) allows DMLW to convey management authority to CBJ for the two subject parcels for expansion of the runways; 2) allows FAA to release the mitigation money to allow SEAL Trust to purchase appropriate land; and 3) ensures that if the SEAL Trust cannot purchase the necessary replacement acreage, DFG is assured that CBJ will provide the remaining balance from their airport property.

**Access, Including Access To and Along Public Waters:**

There is no change to this section of the PD. The required platted 20-foot trail easement will only apply to that portion of land that is now within the refuge, Parcel 2. The requirement does not apply to that portion of the trail outside this parcel and within existing CBJ land. However, DFG and DMLW recommend CBJ grant DFG a public easement for the trail in its entirety. This will give the public a measure of assurance that this important access trail is legally recognized and has a level of protection to ensure that it will exist into the future. If future circumstances change and the easement or portions of it are needed for airport purposes, then the public has a representative in DFG to assure that reasonable alternative access is maintained. DMLW also recommends, but does not require, as part of this finding, that when the as-built survey of the trail is being completed for Parcel 2, the survey also include that portion of the trail outside of this parcel and within CBJ's land.

**Planning and Classification:**

The mitigation section of the PD determined it was not in the best interest of the State to convey the subject lands to CBJ until the mitigation plan has been completed. This section no longer applies, since mitigation will be achieved through a different means, as described below.

The acreage required to be replaced is the FCU equivalent of the 4.76 acres CBJ has requested

for the runway safety areas. To achieve replacement, SEAL Trust will use the mitigation money to purchase the replacement land. If replacement land cannot be purchased, then the land will come directly from CBJ airport land per the RECA. This change allows SEAL Trust to work independently with regards to the constraints imposed by the PD, since this final decision removes them.

The PD did not identify how much of the 11.58 acres on the west end would need to be modified for the purpose of eliminating the hazardous attraction for waterfowl. Because the acreage for eliminating the hazardous attraction for waterfowl is not required to be replaced, this Final Finding and Decision needs to identify this acreage. Of the original 11.58 acres identified for the west end runway conveyance, 8.88 acres is required for the purpose of eliminating a hazardous attraction for waterfowl (diagramed as Parcel 3.) This parcel can remain as refuge land but will no longer function as refuge habitat. Functionally, DFG cannot manage this area as habitat, thus creating a potential mixed ownership/management conflict. Construction activities to eliminate hazardous attraction to waterfowl will be authorized under permit LAS 26603.

In recognition of the problems associated with mixed land management and to address those problems, DNR and DFG support transfer of that land if CBJ can provide equitable replacement land. With this approach, CBJ could manage the parcel specifically for airport purposes, ensuring the area does not attract waterfowl without the complicating factor of acquiring authorizations from DFG and DMLW. Conceivably, Parcel 3 could one day require additional improvements for other airport safety purposes, which would require a lengthy process of replacing this acreage. Because the possibility exists that SEAL Trust could purchase an additional FCU 8.88 acre equivalent with mitigation funds, it is a reasonable expectation that Parcel 3 could qualify as replacement acreage. By surveying this parcel at the same time as the other two parcels, the option to convey this parcel under AS 38.05.825 at the same time as the other two parcels or at a later date exists. This parcel could then be wholly managed as airport land.

The MWSGR statute, AS 16.20.034 (j), states in part that if CBJ demonstrates to DNR and DFG, jointly, that there is a superior public need or use of the land to its use as a State game refuge, after public hearing and a finding by the departments supporting the determination that such a need or use exists or is required, the use shall be permitted. Under DNR's public notice statute, AS 38.05.945, a public hearing was held April 24, 2008, which also fulfilled the public hearing requirement of AS 16.20.034(j). A November 9, 1981 Attorney General's opinion determined that AS 16.20.034 contemplates DNR and DFG would jointly hold a public hearing at which the City and Borough of Juneau would state its case for a "superior public need" for use of the land over its use as a state game refuge, and at which the public would have an opportunity to evaluate and comment upon the municipality's presentation. The airport manager at this public hearing presented CBJ's case for a superior public need.

There was only one member of the general public at the hearing aside from those parties directly involved with the project. That member did not elect to provide comment at that time. The public hearing date was set so that if any member of the public could provide written comments after the public hearing and still have standing to appeal this decision. No written comments were provided after the public hearing concerned with CBJ's case for a superior public need.

Both DFG and DMLW, at the regional level, find that there is a superior public need for the use of refuge land for the purposes of airport expansion (runway safety areas), to eliminate sites attractive to waterfowl, and that these uses shall be permitted.

**Survey:**

In addition to what the Preliminary Decision identified, the survey shall also include the following additional survey requirements:

1) The west end area of the runway will no longer require that the entire proposed 11.58 acres be surveyed as one tract because CBJ no longer requires this amount of acreage to be conveyed to them under this decision. All that is now required for the west end is a survey of the parcel for the runway safety area, the 2.70 acre parcel (Parcel 2).

2) The remaining 8.88 acres (Parcel 3) is not required to be conveyed to CBJ as it will remain refuge land and does not need to be surveyed. However, these 8.88 acres will be modified to eliminate waterfowl hazards and will no longer function as refuge land. There is a means to avoid this mixed land management situation, which would make it possible, at a later date, to convey this parcel of land to CBJ. Surveying this area now and making it a separate tract will facilitate a future conveyance of this tract to CBJ so it can be managed as airport land. The best opportunity for doing this would occur after SEAL Trust has acquired the FCU equivalent acreage for Parcel 3.

**Recommendation:**

Following are changes to the Recommendation of the March 18, 2008 Preliminary Finding and Decision, pages 11-12:

1. Retained as stated in the Preliminary Decision.
2. Retained as stated in the Preliminary Decision.
3. Clarification: since comments were received, this decision is now subject to appeal. Parties with appeal rights will have twenty days after this decision is signed to appeal it to the Commissioner of DNR. If no appeal is filed, then the effective date will be thirty one days after this decision is signed. If an appeal is filed then the effective date is dependent on the Commissioner's response and when that action is taken.
4. Deleted.
5. Deleted.
6. Replaced with the following:
  - a. CBJ will complete an Alaska Tideland Survey for two parcels. The survey costs shall be borne by the applicant. The acreage of the surveys for the two runway safety area parcels will be the basis for determining the FCU equivalent final acreage amount required for replacement. Parcel 2 will show the 20-foot public access easement as identified by the as-built survey of the relocated trail.
  - b. The third parcel (Parcel 3), to minimize waterfowl hazards, will be treated as an

elective parcel to survey. At the time of CBJ's request for DNR survey instructions, CBJ will be asked if they want to include this parcel in the survey. If there is a positive response, the request for survey instructions will include this parcel to be surveyed as a separate tract.

7. Retained as stated in the Preliminary Decision.

## **TEMPORARY ENTRY AND USE AUTHORIZATION**

Typical AS 38.05.825 conveyances do not require a Land Use Authorization for early entry, termed an Early Entry Permit, because the survey is completed. This case is different in that it involves land that needs to still be surveyed and there is a replacement component where the acreage to be replaced is based on a "Function Capacity Unit" equivalent. Therefore, an Early Entry Permit is the appropriate intermediate authorization to allow for survey and pre-patent requirements. The permit will be for a term of five years to complete the survey requirements for purposes of granting patent of the subject land. If unforeseen delays in a project of this scope occur, the permit may be issued for another term of up to five years.

If, during the 5 year period of the initial Early Entry Permit, SEAL Trust provides the State of Alaska with acceptable title to suitable replacement land, that land acquired up to the 4.76 acres will be applied to the condition of fulfilling the acreage for replacement land. If an additional FCU equivalent 8.88 acres is obtained and the parcel (Parcel 3) is surveyed, DMLW will act to include this parcel into the conveyance. If the parcel is surveyed but SEAL Trust does not obtain the full acreage by this time but does so at a later date, then DMLW can work to convey this parcel at the later date.

All other conditions of the Preliminary Decision for ADL 107380 are unchanged.