

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

**Preliminary Decision under AS 38.05.035(e)**

**Proposed Tideland Conveyance to City and Borough of Juneau  
ADL 107380**

**Proposed Action:**

The City and Borough of Juneau has requested conveyance of two parcels of tidelands located in the Mendenhall Wetlands State Game Refuge pursuant to AS 38.05.825 for purposes of expansion of the Juneau International Airport. Parcel 1 is located at the east end of the runway and contains approximately 2.06 acres of tide and submerged lands. Parcel 2 is located at the west end of the runway adjacent to the Mendenhall River and contains approximately 11.58 acres of tide and submerged lands. The proposed parcels are described in Attachment A and contain a total of approximately 13.64 acres of tide and submerged land.

**The public is invited to comment on this Preliminary Decision. Please see the Public Notice section, at the end of this document, for details on submission of comments, including comment deadline and conditions. The Public Notice section also provides information on a public hearing that will be conducted during the public comment period.**

**Authority:**

The applicable authority for the proposed action includes Alaska Statutes (AS) 38.05.035(e) and AS 38.05.825,. The Director of the Division of Mining, Land and Water, Department of Natural Resources (DNR), is authorized by AS 38.05.035(a) (6) to act on behalf of the state in this matter. As provided under AS 38.05.825(b), the Commissioner of the Department of Fish and Game (DFG) must also determine that the proposed use is consistent or compatible with the legislatively designated Mendenhall Wetlands State Game Refuge, as created under AS 16.20.034.

**Administrative Record:**

Case file ADL 107380 is the administrative record for this case. The Juneau State Land Plan, Mendenhall Wetlands State Game Refuge Management Plan, and the Juneau International Airport Final Environmental Impact Statement and Section 4(f) Evaluation are incorporated by reference.

**Scope of Decision:**

The scope of administrative review, under AS 38.05.035(e)(1)-(2), for this proposed land transfer is limited to the decision to transfer title to this land from the State of Alaska to the City and Borough of Juneau. The scope of this review does not take into account any future development, or the effects of such development, that may occur after the transfer.

**Location:**

Geographic: Parcel 1 – an unsurveyed parcel in Mendenhall Wetlands State Game Refuge located on the east boundary of Alaska Tideland Survey 716, and north of USS 3845, within Section 32, Township 40 South, Range 66 East, and Section 1, Township 41 South, Range 66 East, Copper River Meridian.

Parcel 2 – an unsurveyed parcel in Mendenhall Wetlands State Game Refuge located on the west boundary of Alaska Tideland Survey 716, within Section 36, Township 40 South, Range 65 East, Copper River Meridian.

Borough: City and Borough of Juneau

Native Corporation: Sealaska Corporation

Alaska Coastal District: Juneau Coastal Management Program

**Water Bodies:**

Both parcels are located in the Mendenhall Wetlands State Game Refuge at the confluence of the Mendenhall River, Gastineau Channel and Fritz Cove. These bodies of water are considered navigable.

**Title:**

Acquisition Authority: Statehood/Submerged Lands Act. The State of Alaska received title to the affected tide and submerged lands under the Alaska Statehood Act, Public Law 85-508, the Submerged Lands Act, Public Law 31 and under the Doctrine of Equal Footing upon entry of the state into the Union. There are no noted title restrictions or pending interests. The Mendenhall Wetlands State Game Refuge was established in 1976 under AS 16.20.034. Management is subject to the Public Trust Doctrine.

**Reservation of Mineral Estate:**

The State of Alaska, as required by AS 38.05.125, expressly saves, excepts and reserves out of the grant those resources specified by statute. These include, but are not limited to, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, including the right to explore the same.

**Background:**

The City and Borough of Juneau (CBJ) has requested the conveyance of State lands within the Mendenhall Wetlands State Game Refuge (MWSGR) to the municipality so that the Juneau International Airport can be brought into compliance with Federal Aviation Administration (FAA) safety standards and so that hazards identified in a recent wildlife hazard management plan can be addressed. Specifically, runway safety areas (RSAs) at both ends of the runway are too short and, in some areas, too narrow to comply with current FAA standards, and vegetation and tidal pools that accumulate salmon carcasses on tidelands at the west end of the runway attract large birds that pose hazards to landing and departing aircraft. Constructing traditional, graded-surface RSAs (as described in the Juneau Airport FEIS, Alternative 5E) at the east and west ends of the runway will require filling wetlands on the MWSGR. Eliminating waterfowl forage and tide pools at the west end of the runway will also require filling or draining wetlands on the MWSGR. To minimize the cumulative effect of these projects on refuge land, a portion of the RSA for the west end of the runway will be constructed on the tidal wetlands that will have been filled to eliminate the wildlife safety hazard.

AS 16.20.034(i) directs that the MWSGR Management Plan shall allow CBJ to acquire refuge land for airport expansion, and the management plan sets forth four conditions that must be met for CBJ to acquire refuge land for that purpose. The four conditions are addressed in the “Planning and Classification” section of this document. The statute and management plan also commit DFG and DNR to assisting the airport with filling bodies of water on the refuge and adjacent to the runway that create hazardous attractions to waterfowl. Transferring ownership of the lands CBJ has requested will allow the Juneau Airport to construct and more effectively manage the RSAs and address the wildlife safety hazard.

**Compliance with Qualifications under AS 38.05.825:**

AS 38.05.825(a) requires DNR to convey to a municipality tide and submerged lands suitable for occupation and development when requested by the municipality, unless it is found that the public interest in retaining the land in State ownership clearly outweighs the municipal interest, and (1) if the land is within the boundaries of the municipality; (2) the use does not unreasonably interfere with navigation or public access; (3) the municipality has applied for conveyance; (4) the land is not subject to a shore fisheries lease under AS 38.05.082; (5) the land classification is consistent with or compatible with the proposed use; and (6) the land is required for a public or private development approved by the municipality. The proposed action meets these criteria in the following ways:

- Public Interest – The public interest in retaining these lands in State ownership does not outweigh the municipal interest in expanding the Juneau International Airport provided that CBJ meets specific conditions. Both AS 16.20.034 and the MWSGR management plan include provisions for CBJ to acquire land for purposes of expanding the Juneau Airport. Assuming that the conveyance meets this purpose and there is no overriding

State interest, this condition is met. See the “Planning and Classification” section for more information on the conditions for conveyance.

- Location – The land is within the boundary of the municipality.
- Navigation – The proposed use would not unreasonably interfere with navigation.
- Public Access – The proposed use would not unreasonably interfere with public access. See the “Access, Including Access To and Along Public Waters” section for more information on access.
- Application – The municipality has submitted an application for conveyance.
- Shore Fisheries Leasing – The land is not subject to a shore fisheries lease.
- Land Classification – The land classification is consistent with the proposed use. See the “Planning and Classification” section.
- Municipal Approval of Development – CBJ Resolution 2271(f) has approved development of the lands requested for conveyance. In addition, and in order to qualify as land suitable for occupation and development that is required for the accomplishment of a development approved by the municipality, the associated project must be found consistent with the Alaska Coastal Management Program and Juneau Coastal Management Plan prior to conveyance. A consistency review is currently being conducted under project number AK0705-03J.

Under AS 38.05.825(b), the DFG Commissioner must also determine that the proposed use is consistent or compatible with the land if the conveyance is located in a legislatively designated area. In addition, AS 38.05.825(c) - (e) provide that (1) DNR will issue a written decision determining whether the requirements of the statute have been met; (2) upon approval of the conveyance, management authority for the land will transfer to the municipality; (3) the cost of the survey will be borne by the municipality; (4) the conveyance will be subject to the public trust doctrine; (5) reasonable access to public waters and tidelands will be provided by the municipality; (6) title to the land will revert to the State upon the dissolution of the municipality; and (7) the conveyance will not charge against the municipality’s municipal entitlement under AS 29.65.

- ADFG Determination - The “Planning and Classification” section describes how the proposed use is consistent with classification and designation of the land. The DFG Commissioner’s concurrence and determination is included at the end of this document.
- Written Decision – This Preliminary Decision is the first step in the decision process; following public notice and hearing, DNR will consider all comments and issue a Final Finding and Decision. These two documents will constitute the written decision.
- Management Authority – Management authority shall transfer to CBJ upon the effective date of the final finding and decision if the conveyance is approved.
- Survey Costs – Survey costs shall be borne by the municipality.
- Public Trust Doctrine – If approved, conveyance shall be made subject to the Public Trust Doctrine.
- Reasonable Access – Reasonable access shall be provided. See the following section.
- Reversionary Rights – If approved, conveyance shall be subject to the land reverting to the State upon dissolution of the municipality.
- Municipal Entitlement – If approved, conveyance will not charge against the CBJ municipal entitlement.

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

Pursuant to AS 38.05.825, the conveyance cannot unreasonably interfere with public access and the municipality must provide reasonable access to public waters and tidelands. Pursuant to AS 38.05.126(a), the public has a constitutional right to free access to, and use of, navigable or public waters of the State. AS 38.05.127 requires a determination by the Department regarding the reservation of specific public access easements to and along these waters.

In the final decision on this proposed action, the Department will determine whether this disposal of State interest will reserve a public access easement pursuant to AS 38.05.127(a)(2). Pursuant to 11 AAC 51.045, the Department will consider comments and evidence provided by the Department of Fish and Game and from a municipality or other person during the public notice and review period in making this determination. Public notice of this decision constitutes notice that the Department intends to determine, based on comments and supporting information, whether the easement is necessary to ensure public access, or whether regulating or limiting public access is necessary for other beneficial uses or public purposes, such as public safety or security. The Department is aware of the following site-specific conditions that may justify not reserving the easement:

Parcel 1 – The parcel on the east side of the runway is not generally accessible. The west boundary of the parcel abuts tidelands owned by CBJ and managed by the Juneau International Airport (ATS 716); facilities on this adjacent land consist of the east end of the airport runway and the proposed project involves expanding the runway onto parcel 1. Reasonable access to the public waters and tidelands surrounding the remaining three sides of this parcel will continue to exist after conveyance.

Parcel 2 – The parcel on the west side of the runway does not abut uplands; however, it is accessible across filled tidelands owned by CBJ and managed by the Juneau International Airport (ATS 716). Located on that adjacent land is a popular public trail which provides access from uplands to Parcel 2 and other State owned tide and submerged lands within the MWSGR. Based on the proposed runway expansion project, the lands on Parcel 2 will be filled and the trail will be relocated farther west on Parcel 2.

Unless comments and other information submitted to the Department provide justifiable and convincing evidence that the reservation is necessary, this disposal of State interest will not reserve access easements across Parcel 1, but will reserve a 20-foot wide public access easement across Parcel 2. This easement shall be located 10 feet either side of the centerline of the trail as relocated and platted. This public access easement may be temporarily and intermittently closed if required for construction, maintenance, operation and use, consistent with State and federal regulations, and for purposes of protecting public health and safety and maintaining security. Those interested in how the Department decides this issue should submit written comments regarding this issue and read the final decision that follows. The Department will provide notice of the final decision to all persons who submit written comments during the public notice and review period.

## Planning and Classification:

AS 38.05.825(a)(5) requires that land to be conveyed must be either “classified for waterfront development or for another use that is consistent or compatible with the use proposed by the municipality or the proposed use of the land is consistent or compatible with a land use plan adopted by the municipality, the department, or the Alaska Coastal Policy Council.”

The lands requested for conveyance are legislatively designated as a part of the Mendenhall Wetlands State Game Refuge under AS 16.20.034. Management is subject to the MWSGR Management Plan. In order for conveyance to be consistent with AS 16.20.034(j), CBJ must demonstrate to both DNR and DFG that there is a public need for use of the land greater than its use as a State game refuge. In addition, AS 16.20.034(i) states that the MWSGR Management Plan shall include provisions under which CBJ may acquire land, by sale, exchange or otherwise, for purposes of expanding the Juneau Municipal Airport.

Accordingly, the MWSGR Management Plan provides that CBJ may acquire refuge lands for airport expansion only after CBJ demonstrates that:

- 1) there is significant public need for the expansion, which cannot reasonably be met off-refuge or through the use of alternative transportation modes and technologies;
- 2) the use of refuge lands is avoided or minimized to the maximum extent feasible;
- 3) all impacts to the refuge and to refuge resources are fully mitigated through restoration and/or replacement; and
- 4) the airport expansion project will not create a hazardous attraction for waterfowl.

The CBJ conveyance will meet these four criteria as follows:

- Public Need – The FAA is the federal agency charged with ensuring public safety in aviation operations and facilities. They have identified two public safety concerns at the Juneau International Airport: 1) deficient RSAs, and 2) wildlife hazards on the refuge land near the west end of the runway. To meet the public need for safe aviation operations and to bring the airport into compliance with FAA requirements, the CBJ must expand RSAs at both ends of the runway and eliminate the wildlife hazards at the west end of the runway. Addressing these safety concerns will require use of MWSGR land.
- Avoidance and Minimization- RSAs can be built using two technologies: a traditional graded surface or an engineered materials arresting system (EMAS). The FAA requires RSAs with graded surfaces to extend 1000 feet beyond runway thresholds; an EMAS, which slows aircraft using an engineered concrete surface that collapses under weight, can be shorter in length. RSAs using either surface would require the use of refuge land, but EMAS would require about 2 acres less land than the selected alternative. CBJ and FAA believe that EMAS is inappropriate for the Juneau Airport, and has identified graded surface RSAs as the preferred alternative. To minimize the use of refuge land, a portion of the RSA for the west end of the runway will be built on refuge land that has been filled or drained to eliminate the wildlife safety hazard.

An evaluation of alternatives, including avoidance and minimization analysis, is presented in the Juneau International Airport Final EIS and Section 4(f) Evaluation, dated April 2007. The July 6, 2007 Record of Decision selected the graded-surface RSA alternative. The selection of this alternative was consistent with Public Law 109-443, which requires selection of the least expensive alternative that meets FAA RSA standards. Federal regulations also forbid airports in Alaska from shortening the useable length of their runways to achieve acceptable RSAs. Since the airport property is bounded on the east and west by the MWSGR, and moving the runway elsewhere is impractical, the RSA and west end wetland fill projects will avoid and minimize use of refuge land to the maximum extent feasible.

- Mitigation- The MWSGR Management Plan requires that land taken from the refuge for airport expansion be replaced. The refuge management plan only envisions adding land to the refuge that is within or abuts the refuge boundary, but other nearby wetlands are also eligible for purchase as replacement land.. Any lands within or outside of the refuge boundary acquired to replace land taken for airport expansion will require an act of the Alaska Legislature to designate them as refuge land. In order to facilitate replacement of refuge land, and to address other mitigation requirements, CBJ has proposed a mitigation plan (Attachment B).

The refuge lands requested for airport expansion fall within several wetlands classifications. Because the exact acreage of each wetland type may not be available for replacement land, DFG and CBJ have agreed to assign functional capacity units (FCUs) to each wetland type. FCUs are a measure of the biological productivity and other values of each wetland type. The CBJ will provide the State with replacement lands having the FCU equivalent of lands taken for airport expansion.

At this time the only available parcels of land within or adjacent to the refuge that could be used for replacement purposes are owned by private parties. The mitigation plan therefore specifically dedicates \$1,043,275.00 for acquisition of replacement land from willing landowners. To ensure sufficient funding exists, this amount is roughly double the actual amount thought necessary to replace refuge land. If any of this funding remains after refuge land is fully replaced, it would be used to mitigate effects of wetlands filled on airport property. The funds to purchase replacement refuge land will be administered by a third party, the Southeast Alaska Land (SEAL) Trust. Purchases by the SEAL Trust will be subject to DFG and DNR approval. After purchase, parcels will in turn be conveyed to the State of Alaska until the FCU equivalent acreage is replaced.

Initially the SEAL Trust will focus on acquiring replacement land from accreted or relicted land in private ownership within the refuge boundary. Many landowners with upland property adjoining the refuge have “riparian rights” and a common boundary that is defined as the line of mean high water (MHW), sometimes referred to as a “meander boundary.” Such a boundary is susceptible to change based on both accretion (the extension of land area due to a gradual, natural and imperceptible build up of additional land by the accumulation

of alluvium material) and reliction (a similar increase of land area due to the lowering of the water level by natural causes, such as uplift). Landowners have a riparian right to land extending to the MHW line.

Over time, the area below MHW line has shrunk in many parts of the refuge, primarily due to the gradual uplift of lands in the area from the melting of glaciers and icefields (known as "isostatic rebound"). When this occurs, a "cloud on title" exists on the land that lies between the riparian upland owner's original property boundary (the MHW line at the time of survey) and the current line of MHW. To remove this cloud on title, the upland owner may file a "Complaint for Quiet Title" with the court. If the court finds that the additional land is the result of accretion or reliction, a "judgment quieting title" is issued, and the owner receives clear title to the additional land while maintaining a riparian right to any additional land that may be accreted or relicted. Since this land was formerly part of the refuge, the process results in the gradual removal of land from the refuge.

The proposed mitigation plan, if successfully implemented, will mitigate the loss of the approximately 14 acres that will be required for the expansion of the airport through the acquisition of acreage in an amount that will yield the FCU equivalent of the land to be lost. The SEAL Trust will work with adjoining landowners to quiet title to lands adjacent to the refuge, purchase these lands, and convey them to the State of Alaska for addition to the refuge, thus extinguishing the riparian right of the upland owner. This presents a unique opportunity to regain land which has been lost and protect land that could be lost to the refuge through the processes of accretion and reliction.

Land outside the refuge boundary, as well as privately owned land within the refuge boundary that is acquired as replacement land, cannot become refuge land without legislative action. DMLW acknowledges that replacement land will not become part of the Mendenhall Wetlands State Game Refuge until this designation is approved by the Legislature. DMLW intends to issue an Interagency Land Management Assignment to DFG which will allow direct DFG management of the land as refuge land to the maximum extent allowed under law until the Legislature can take action. As individual parcels are acquired, they will be added to the DFG management assignment.

While the mitigation plan appears to be a good opportunity to regain and protect refuge lands, DMLW recognizes that the proposed plan does not provide certainty that the land will be replaced, as required by the MWSGR Management Plan. This is because (1) no replacement land has been actually committed, (2) no deadline for completing the acquisition has been determined, (3) the success of the mitigation plan relies on willing sellers, and (4) no contingency funds are identified if the initial funding is not enough to accomplish the task.

For these reasons, it is not in the best interest of the State to convey the subject lands to CBJ until the mitigation plan has been completed. Conveyance shall therefore be subject to the following conditions:



(1) DFG and DMLW approval of each parcel proposed as replacement land, and its FCU value, will be required prior to the SEAL Trust entering into any binding agreement with a landowner. Such approvals will occur through the SEAL Trust Advisory Committee, or by another method approved by DFG and DMLW.

(2) As an incentive to complete the mitigation plan, CBJ will provide a cash bond of \$409,200<sup>1</sup>, which shall be paid in annual increments of \$40,920. The first payment shall be due on the effective date of the Final Finding and Decision, or as otherwise agreed to by DMLW. This performance guarantee shall be returned upon the successful completion of replacement land acquisition and conveyance to the State, subject to paragraph (3) below.

(3) The land replacement will be completed as soon as possible, but no later than ten years from the effective date of the Final Finding and Decision. If all replacement lands have not been conveyed to the State prior to the tenth anniversary of the effective date of the Final Finding and Decision, the land will not be conveyed. In this case, CBJ must either vacate and restore the land, or obtain a DMLW land use authorization. This condition may be modified as follows:

1. If, despite good-faith efforts, at the end of the ten-year period sufficient replacement land has not been acquired, but there is remaining replacement land that may be feasibly acquired and conveyed to meet the FCU equivalent acreage, DFG and DMLW may mutually agree to allow an extension of time to acquire and convey the remaining parcel(s), or

if JNU/SEAL Trust do not have signed purchase and sale agreements acceptable to DFG and DMLW for sufficient replacement land to meet the FCU equivalent acreage, DFG and DMLW together may elect to use remaining refuge mitigation funds equal to the fair market value of the acreage not yet acquired to fund another type of mitigation acceptable to DFG. If original funds are insufficient to cover this amount, the performance guarantee will be made available to fund the remaining obligation. Any balance remaining in the performance guarantee will be returned to CBJ after mitigation is complete.

2. If the original funding amount proves inadequate, the performance guarantee will be made available to complete the purchase of replacement land to meet the FCU equivalent acreage. Any balance remaining in the performance guarantee will be returned to CBJ after the acquisition and conveyance is complete.

3. If, despite good-faith efforts, after ten years JNU/SEAL Trust do not have signed purchase and sale agreements acceptable to DFG and DMLW on sufficient replacement land to meet the FCU equivalent acreage, a significant amount of the FCU equivalent land has not been replaced, alternative mitigation measures have not been identified, and CBJ cannot vacate and restore the occupied lands, DMLW will authorize the improvements with

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<sup>1</sup> The performance guarantee amount is based on the appraised value of \$30,000 per acre multiplied by the number of acres of land that will be lost to the refuge, 13.64, for a total amount of \$409,200.00. The annual rate will therefore be \$40,920.

a lease and charge an annual rental fee. This fee will be in an amount equivalent, in DMLW's determination, to the rental value of the land lost to the refuge, but not less than the fair market rental value at the time of the determination. In addition to designating the land that has been acquired and conveyed to the State as part of the refuge, the Legislature will be asked to appropriate the rental fees to DFG for refuge purposes in recognition that they are paid in lieu of replacement land. Any rental fees collected prior to such legislative action will be placed in a reserve account. If at this time funds originally dedicated in the mitigation plan to replacing refuge land remain unspent, they will be made available for purchase of wetlands to meet other mitigation requirements identified in the Juneau Airport Improvement Project mitigation plan.

These conditions will provide reasonable assurance to DFG, DMLW and the public that if the mitigation plan is not completed because of insufficient funds or a lack of available replacement land, alternative measures will be used to achieve mitigation in another manner acceptable to the public. They will also provide incentive to complete the mitigation plan.

- Hazardous attraction for waterfowl- The airport projects proposed by CBJ that require refuge land will eliminate, rather than create, attractants to waterfowl by covering waterfowl forage and filling tidal pools that accumulate salmon carcasses and attract other large birds.

AS 16.20.034(j) requires a finding and a public hearing, and AS 16.20.034(i) requires that the deed must restrict the use for airport expansion purposes only. These conditions are discussed below in the "Access, Including Access To and Along Public Waters" section and Condition 5 of the "Recommendation" section, respectively.

#### **ACMP and Agency Review:**

The conveyance is not subject to review under the Alaska Coastal Management Program. However, in order to qualify as land suitable for occupation and development, and required for the accomplishment of a development approved by the municipality, the associated project must be found consistent with the Alaska Coastal Management Program and Juneau Coastal Management Plan prior to conveyance. A consistency review is currently being conducted under project number AK0705-03J.

A combined agency and public review process will be conducted. Public notice will be provided in accordance with AS 38.05.945, and a public hearing will be held as required by AS 16.20.034(j). A final finding and decision on this conveyance of State tide and submerged land will be made following review and consideration of all comments and testimony.

#### **Hazardous Materials and Potential Contamination:**

It is DMLW's management responsibility to protect the overall public interest if there is a reasonable expectation that a hazardous condition, or hazardous, toxic or radiological material or contamination from such material exist or is known to exist on the land being disposed of. No

hazardous material or contamination from hazardous material is known to exist on the land proposed for conveyance. Environmental risk associated with this proposed conveyance is expected to be minimal.

**Survey:**

The proposed conveyance has not been surveyed. CBJ will be required to complete an Alaska Tideland Survey (ATS) at its expense. This survey is required in order for CBJ to receive a State tideland patent.

To initiate the survey process, DMLW will request that CBJ submit a “Request for Survey Instructions” along with the \$225.00 fee for preparing the instructions. DMLW will process the request and forward it along with other pertinent information to the DMLW Survey Unit in Anchorage, which will prepare the instructions.

It is recommended that the field survey portion not be completed until after all fill is placed, and that all fill starting at and including the toe of the fill is within the boundary of the ATS. It is further recommended that the surveyor verify that the survey is an “as-built” and not a pre-built survey. It is also recommended that on Parcel #2 the 20 foot public access easement is platted and identified as a public access easement.

**Discussion of Alternatives:**

Alternatives considered:

1. Approve the proposed conveyance of both parcels. The Juneau International Airport will meet Federal Aviation Administration runway safety standards and address wildlife hazards.
2. Deny the proposed conveyance of one or both of the parcels. The Juneau International Airport will not be able to meet Federal Aviation Administration runway safety standards and address wildlife hazards, with resulting impacts to public safety and continued air access to Juneau.

Preferred Alternative: Alternative No. 1 is the preferred alternative. DMLW believes that the proposed conveyance complies with the requirements of AS 38.05.825, as discussed above. Unless public and agency review indicates that either of the parcels do not qualify for conveyance under AS 38.05.825, or that the public interest in retaining the parcels clearly outweighs the municipality’s interest in managing the parcels, DMLW will convey these parcels.

**Recommendation:**

The Southeast Regional Office of the Division of Mining, Land and Water recommends that it is in the State’s best interest to convey these lands subject to the following conditions:

1. The land will be subject to the public access easement provisions described in the “Access, Including Access To and Along Public Waters” section above.

2. The land will be approved for conveyance to the City and Borough of Juneau only if the associated proposed development is found consistent with the Alaska Coastal Management Program and Juneau Coastal Management Plan as described in the “Planning and Classification” and “ACMP and Agency Review” sections above.

3. Land management authority and administration will be transferred to the City and Borough of Juneau upon the effective date of the Final Finding and Decision. Conveyance will not charge against the CBJ municipal entitlement.

4. CBJ will receive patent only after mitigation has been completed to the satisfaction of DFG and DMLW, according to the provisions and requirements set forth in the “Planning and Classification” section above, including the posting of a performance guarantee.

5. If the conditions requiring conveyance of replacement land are not fully met as herein provided, DMLW will not convey the land to CBJ, and will proceed according to the provisions and requirements set forth in the “Planning and Classification” section above.

6. CBJ will complete an Alaska Tideland Survey for the two parcels. All survey costs shall be borne by the municipality. The acreage of these two surveys will be the basis for determining the final acreage amount required for replacement.

7. The conveyance will be subject to:

- Reservation of the mineral estate pursuant to AS 38.05.125.
- Valid existing rights and all required easements.
- The Public Trust Doctrine.
- A restriction that the grantee may lease the land, but may not sell it.
- A restriction that title to the land conveyed under this authority reverts to the State upon dissolution of the municipality, or if the land becomes unnecessary for the development and operation of the airport.
- A restriction on use of the land for airport expansion purposes only.

The final finding and decision will incorporate changes justified by comments during the agency and public review process.

Prepared by:

  
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Jim Anderson  
Natural Resource Specialist

3-12-8  
Date

**ADFG Concurrence and Determination:**

The finding presented above has been reviewed and considered. I concur and determine that the recommended action may be consistent or compatible with AS 16.20.034 and is hereby approved to proceed to public notice.

  
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John White  
Department Procurement Officer

3/12/08  
Date

**Preliminary Finding and Decision:**

The finding presented above has been reviewed and considered. I find that the recommended action may be in the State's best interest and is hereby approved to proceed to public notice.

  
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Ed Collazzi  
Southeast Regional Manager

3/19/08  
Date

AS 38.05.035(e) to Commissioner DNR to  
Director to Regional Manager SERO  
Delegated Authority

April 15, 1981  
Date

Attachments:

Attachment A: Conveyance Diagrams  
Attachment B: Proposed Mitigation Plan

## PUBLIC NOTICE, FINAL DECISION AND APPEAL PROCESS:

In accordance with the provisions of AS 38.05.945, public notice seeking comments on the preliminary decision will be published in the Anchorage Daily News and the Juneau Empire. The post offices in Juneau and Auke Bay will be requested to post the notice in a conspicuous location per AS 38.05.945(c). Notice will be given to those parties having an interest in the adjacent land, per AS 38.05.945 (b) the adjacent upland owner who will receive notice is Peter Bernstein. In addition notice will be sent to the City and Borough of Juneau, as both the municipality and the applicant. Per AS 38.05.945(b)(3)(c) the Territorial Sportsmen, Ducks Unlimited, the Refuge Citizens Advisory Council, the Audubon Society, and Betty Smith et al will receive notice. Per Administrative Order 183 the notice will appear in the Alaska Online Public Notice System available at [www.state.ak.us](http://www.state.ak.us) (click on "Notices" at top of page). Per Administrative Order 186 the Douglas Indian Association and the Central Council Tlingit and Haida will be sent notice. Notice will be given to the Alaska Department of Fish & Game and to the City and Borough of Juneau, soliciting their comments on access.

The public is invited to comment on this preliminary decision. Comments must be received in writing by the DNR Division of Mining, Land and Water by mail at 400 Willoughby Avenue, P.O. Box 111020, Juneau, AK 99811-1020, by fax at 907-586-2954, or by electronic mail at [jim.anderson@alaska.gov](mailto:jim.anderson@alaska.gov), by May 5, 2008 in order to ensure consideration. Please include your mailing address and telephone contact. In order to establish appeal rights regarding this decision, you are required by law to meaningfully participate in the decision process by commenting on the decision, in writing, prior to the comment deadline. Following the deadline, all timely written comments will be considered, and DFG and DMLW may modify this decision based on public comments received.

Per AS 16.20.034(c) the DFG and DNR are required to hold a public hearing on this conveyance. If you wish to provide testimony you may do so at the hearing scheduled for 7:00pm on April 24, 2008 at the Hickel Room in Centennial Hall. Your testimony will ensure consideration in this decision and will establish your appeal rights. If you have any questions please contact Tom Schumacher at 465-4364 or Jim Anderson at 465-3427.

If DFG and DMLW determines that public comments in response to this notice indicate the need for significant changes to the decision, additional public notice will be given. If no significant changes are required, the preliminary decision, after any necessary minor changes, will be issued as a final decision. A copy of the final decision, along with instructions on filing an appeal, will be sent to all persons who comment on the preliminary decision. Persons who do not submit written comments during the comment period will have no legal right to appeal the final decision.