

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

**Preliminary Decision  
ADL 108124**

**AS 38.05.035(e)**

**Proposed Conveyance to the City and Borough of Juneau  
Pertaining to Submerged Land in Gastineau Channel  
For the Development of Two Offshore Cruise Ship Berths  
In Accordance with AS 38.05.825**

**PROPOSED ACTION:**

Pursuant to Alaska Statute 38.05.825, the City and Borough of Juneau (CBJ) has requested conveyance of a parcel of state submerged land in Gastineau Channel, containing approximately 17.87 acres, for the purpose of developing two offshore cruise ship berths associated with an expansion of the existing Juneau downtown cruise ship dock.<sup>1</sup> The requested parcel is within Subunit 6a8 of the Juneau State Land Plan (JSLP). Related to this preliminary decision is a proposed area plan amendment to the JSLP and a land classification order (LCO), number SE-93-00-004A07. The plan amendment and LCO, if implemented, would add the designation of Waterfront development and classification of Waterfront development land to the existing designations and classification of Subunit 6a8 of the JSLP. Implementing the plan amendment and LCO to reflect the ongoing and future marine development activities associated with the Juneau Harbor are necessary precursors to conveying the parcel to CBJ under AS 38.05.825.

**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.**

**SCOPE OF DECISION:**

Under AS 38.05.035(e)(1)-(2), the scope of administrative review for this proposed land transfer is limited to the decision to convey title of the submerged lands from the State of Alaska to CBJ. It does not take into account any future activity that may occur after the transfer.

**ADMINISTRATIVE AUTHORITY:**

The applicable authority for the proposed action includes AS 38.05.035(e), AS 38.05.825, AS 38.05.125, AS 38.05.126(a), AS 38.05.127, AS 38.04.065, and the Alaska Administrative Code 11 AAC 51. The Director of the Division of Mining, Land and Water (DMLW), Department of Natural Resources (DNR), is authorized by AS 38.05.035(a)(6) to act on behalf of the state in this matter. The

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<sup>1</sup> See Attachment A for CBJ's Development Plan.

Director has delegated to the Regional Manager the authority to approve proposed and final decisions under AS 38.05.035(e), Department Order 3.

**ADMINISTRATIVE RECORD:**

DMLW tideland conveyance case file ADL 108124 is the administrative record for this case. The JSLP adopted January 25, 1993, is incorporated herein by reference.

**DESCRIPTION:**

**Location:**

**Geographic:** The parcel requested for conveyance contains a total of approximately 17.87 acres and is located within Section 23, Township 41 South, Range 67 East of the Copper River Meridian, USGS Quad Map Juneau B-2, Latitude 58° 17'47.27" North, Longitude 134° 24'07.28" West. The parcel is adjacent to and seaward of Alaska Tideland Survey (ATS) 3, and it is seaward of the Taku Smokeries dock, the Alaska Steamship Wharf and the Cruise Ship Terminal in Juneau Alaska, and is more particularly described as follows:

Commencing at the Point of Beginning record Corner 39 of ATS 3 as shown on the official Plat of Tidelands Addition to the City of Juneau recorded as plat #340 in the Juneau Recording District, State of Alaska, on April 7, 1961, from which Corner 40 of said ATS 3 bears South 42 degrees 14' 32" East, a record distance of 3002.34 feet, thus being the Basis of Bearing for this legal description; thence from said Corner 40 North 87 degrees 44' 45" East, a distance of 100.82 feet; thence South 47 degrees 45' 28" West, a distance of 291.14 feet; thence North 42 degrees 14' 32" West, a distance of 3130.22 feet; thence North 64 degrees 00' 00" East, a distance of 260.39 feet; to the Point of Beginning, containing 17.87 acres, more or less.<sup>2</sup>

**Municipality:** City and Borough of Juneau

**Native Corporation:** Sealaska Corporation

**Tribal Contact:** Central Council of Tlingit and Haida Indians of Alaska

**Water Bodies:**

The parcel of submerged land is located in part seaward of and immediately adjacent to ATS 3 and in part within ATS 3 in Gastineau Channel, near the Taku Smokeries dock, the Alaska Steamship Wharf, and the Cruise Ship Terminal, in Juneau Alaska. The parcel is a submerged, navigable and tidally influenced body of water.<sup>3</sup>

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<sup>2</sup> See Attachment A, CBJ's Development Plan, for maps of the parcel to be conveyed.

<sup>3</sup> See Attachment B for a visual site plan showing the current boundary of ATS3 and the second page shows the proposed new boundary parallel and seaward of the existing boundary.

**Title:**

**Acquisition Authority:** The State of Alaska received title to the bed of Gastineau Channel affected tide and submerged lands under the Submerged Lands Act of 1953.<sup>4</sup> Under the Act, the State of Alaska receives title to the lands beneath navigable waters, including lands that would ordinarily pass to the State under the Equal Footing Doctrine<sup>5</sup> which includes the periodically submerged tidelands and inland navigable waters. There are no noted title restrictions or pending interests. Management is subject to the Public Trust Doctrine.<sup>6</sup>

**Title Restrictions:** Pursuant to AS 38.05.825, a municipality receiving land under the statute, including CBJ, may lease the land but may not sell it. Additionally, title to and management authority for the conveyed land reverts to the State upon dissolution of the municipality. Finally, the municipality accepts management authority and title to the tide and submerged lands subject to the rights of the public under the Public Trust Doctrine.

**Reservations:** A conveyance of submerged land to CBJ will be subject to the following:

1. 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. Reservation of public access easements under AS 38.05.127 if so reserved (see the section entitled “Access, Including Access to and along Public Water” for additional details).
3. Reservation of Mineral Estate: As required by AS 38.05.125, the State of Alaska 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:**

Since 2001, CBJ has acquired approximately 253 acres of tide and submerged land from the Division in accordance with AS 38.05.825.<sup>7</sup> On December 1, 2011, CBJ applied for conveyance of 17.87 acres of State tide and submerged lands in Gastineau Channel at the location of the Alaska Steamship Wharf and the Cruise Ship Terminal along the Juneau waterfront. The proposed use of the parcel is for cruise ship berthing. According to CBJ’s Development Plan, the current structures were designed to meet the needs of passenger ships with an overall length of around 800 feet. Ship sizes have increased and the berths now need to accommodate cruise ships over 1,000 feet.

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<sup>4</sup> P.L. 31, 83<sup>rd</sup> Congress, First Session; 67 Stat. 29.

<sup>5</sup> *Lessee of Pollard v. Hagen*, 44 U.S. (3 How.) 212, 228-229 (1845). The Equal Footing Doctrine established that all new states enter the Union on an equal footing with the original states in respect to sovereign rights and powers. Those sovereign rights and powers include ownership of the beds of navigable waters. See also Title Report No. 3136 (March 27, 2012).

<sup>6</sup> See Title Report No. 3136 (March 27, 2012).

<sup>7</sup> CBJ is in the process of obtaining an additional 3.34 acres of tidelands in Statter Harbor under AS 38.05.825 (ADL 107932).

CBJ owns and operates two cruise ship docks. They are commonly known as the Alaska Steamship Dock (north berth), located next to the downtown library and parking garage building, and the Cruise Ship Terminal (south berth), located in the area of the Visitor's Center and the Tram building. In addition to the need to accommodate larger ships, CBJ is proposing improvements to the existing moorage system because the current system has been damaged by being overloaded, has substantial underwater corrosion, and does not meet full Homeland Security provisions. CBJ's stated goal is to increase the safety and security of the vessels docked in Juneau, including reducing the need for lightering from off-shore moored vessels, to support the newer cruise ships that are often in excess of 1,000 feet, provide a safe area for passengers, and consolidate security.<sup>8</sup>

Regarding the project's design, CBJ intends to reconfigure and construct two new offshore floating moorage docks to accommodate larger cruise ships. The new offshore facilities consist of a North Berth and a South Berth spanning approximately 2,200 linear feet and the project will be implemented through a three year construction schedule. The South Berth construction is scheduled to occur between October 2013 and May 2015, and the North Berth construction will occur October 2014 through May 2015.<sup>9</sup>

The first phase of construction includes removal of the existing Cruise Ship Terminal transfer bridge and construction of specific pile supported decks and retaining wall structures in place of the transfer bridge and adjacent to the South Berth. The Phase 1 work will be combined with installation of shore side electrical utilidors crossing South Franklin Street and other upland improvements. Phase 2 and Phase 3 will include the installation of two new floating concrete pontoons, a 50 foot by 300 foot South Berth and a 50 foot by 400 foot North Berth; two vehicle transfer bridges; mooring and breasting dolphins; pile supported decks and access docks; small vessel moorage facilities; gangways; catwalks and various dockside water, sewer and electrical utilities.<sup>10</sup> The majority of the construction will occur outside of the requested parcel area and within tide and submerged land already owned by CBJ.



DMLW Photo 2008



DMLW Photo 2008

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<sup>8</sup> CBJ Development Plan, "CBJ Downtown Cruise Ship Docks Reconfiguration," pp. 1-2 (undated).

<sup>9</sup> CBJ Development Plan, pp. 2-3.

<sup>10</sup> CBJ Development Plan, pp. 2-3.



## **Planning, 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 or the department.” Currently the parcel CBJ seeks is not classified within the JSLP as waterfront development or another use that is consistent or compatible with CBJ’s development plan or the JSLP as required by law for conveyance.

In order to comply with the statute, concurrent with this decision DMLW is proposing to add the classification of “Waterfront development land” and the designation of “Waterfront development” to the JSLP. Currently, the JSLP designates Subunit 6a8 as Fish and Wildlife Harvest (Hv) and Fish and Wildlife Habitat (Hb). These designations both convert to the classification of “Wildlife habitat land.”<sup>11</sup> The JSLP “Management Intent” section discusses Subunit 6a8 and the submerged lands off of the Juneau waterfront, and specifically envisions commercial development including development related to cruise ship activity. The JSLP states that the plan’s intent related to Subunit 6a8 is as follows:

[T]o provide both land and water space for uses and activities which are directly related to maritime activities while minimizing significant adverse impacts on habitat and harvest for which these subunits are co-designated. Maritime activities include private boating of all types, tourism (including cruise ships, transient pleasure vessels, and floatplanes), commercial fishing, use by charter boat, floatplane activity, and any other activities involving the human use of waterbodies for sport, recreation, or commerce. Although all existing developments occur on non-state tidelands, portions of future developments such as breakwaters, marinas, and docks may require authorizations for use of state tidelands. Development directly related to maritime activities along the edges of the subunits that extend onto state tidelands and submerged lands are an allowable use if they do not pose hazards to navigation. Fill may be authorized in these subunits if consistent with the Juneau Coastal Management Plan and the guidelines in this plan.<sup>12</sup>

The management intent specified within the JSLP is thus consistent with the current and future maritime activities along the Juneau waterfront. The proposed plan amendment and land classification order, if finalized, will add the designation of Waterfront development and classification of Waterfront development land to Subunit 6a8 of the JSLP. The JSLP defines Waterfront development as the use of tidelands, submerged lands, or shorelands for water-dependent or water-related facilities, usually for industrial or commercial purposes. Waterfront development includes: piers, wharves, harbors, log

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<sup>11</sup> Area plan “designations” indicate in general how the land described in the plan is to be managed by DNR. The two-letter designations indicate the primary and co-primary uses and resources for each subunit as designated by the plan. (JSLP 3-1) To implement the plan on state lands, DNR must “classify” state lands to reflect the intent of the land use designations made by the plan. Land classification is the formal record of uses and resources and is statutorily required for land planning. (AS 38.05.300; AS 38.04.065; 11 AAC 55.0200; JSLP 4-1 & 4-3)

<sup>12</sup> JSLP 3-116.

storage, log or mineral transfer facilities, seafood processing facilities, commercial recreational facilities, and other resource development support facilities.”<sup>13</sup> The addition of the designation of Waterfront development more accurately reflects the ongoing and significant maritime commercial activities of the Juneau waterfront associated with tourism. Tourism is the predominant industry along the Juneau waterfront from April through September. Retaining the Habitat and Harvest designations and Wildlife habitat land classification in the JSLP is also appropriate and reflects the fish and wildlife populations existing and available for harvest along the Juneau waterfront during all seasons.

DMLW finds that the classification of Waterfront development land as set forth in the plan amendment and LCO, will fulfill the requirement of AS 38.05.825(a)(5). If the plan amendment and the LCO are not implemented, DMLW will not be able to convey the parcel to CBJ because the conveyance would conflict with the statute.

#### **Access, Including Access To & Along Public Waters:**

Pursuant to AS 38.05.825, a conveyance of tide and submerged land cannot unreasonably interfere with public access, and the municipality receiving the land 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. Under AS 38.05.127, DMLW is required to make a determination regarding the reservation of specific public access easements to and along these waters.

Here, there are site-specific conditions that make it unreasonable to reserve a public access easement. The parcel proposed to be conveyed is primarily situated adjacent to and seaward of ATS 3, a tidelands parcel that was conveyed to CBJ several decades ago. CBJ’s requested parcel is submerged water and is not adjacent to any uplands. There is no platted public access easement extending from ATS 3 to this parcel. Additionally, CBJ’s project will encourage to some extent public access in that the project allows for float planes and lightering vessels to continue to use the Juneau Harbor, and there will be more pedestrian access to the public space known as the Seawalk.

Pursuant to 11 AAC 51.045, DMLW will consider comments and evidence provided by the Alaska Department of Fish and Game (ADF&G), other agencies, the public and CBJ during the public notice and review period and prior to rendering a final determination regarding a public access easement.

#### **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 exists or is known to exist on the land proposed for disposal. Low level metals/petroleum contamination is present just offshore of the harbor. The Juneau cruise ship dock is an open site on the

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<sup>13</sup> JSLP 3-6 (references to the now defunct Juneau Coastal Management Plan are not included).

ADEC contaminated sites database.<sup>14</sup> Environmental risk associated with this proposed conveyance should be minimal.<sup>15</sup>

### **Survey and Appraisal:**

A portion of this parcel has been surveyed and is known as Alaska Tideland Survey 3. A portion of the project is within ATS 3 and this portion was conveyed to CBJ in 1962 and is not part of this decision.<sup>16</sup> This decision involves the submerged land adjacent to and seaward of ATS 3.<sup>17</sup> If a final decision is issued conveying the tidelands parcel to CBJ a new tidelands survey will be completed at the expense of CBJ for the submerged land outside of ATS 3 and prior to the issuance of a State tideland patent. An appraisal is not required for an AS 38.05.825 conveyance because the land is conveyed without charge.

### **Agency Review, Public Notice and Comment and Permits Obtained:**

State agency review for this conveyance decision was conducted and the following agencies were provided a copy of the draft preliminary decision: The Department of Fish and Game (ADF&G), the Department of Environmental Conservation (DEC), the Department of Transportation, and the Department of Natural Resources (specifically a hydrologist in the Water Section of the Division of Mining Land and Water). Two comments were received. DEC noted that “low-level metals/petroleum contamination is present just offshore,” and that the Juneau Cruise Ship Dock is an “open site on the ADEC contaminated sites database.” ADF&G responded that it has no objection to the conveyance of the parcel to CBJ and no objection to the proposed plan amendment to add an additional land classification to the parcel in that the conveyance will not impact fish habitat.

A thirty day public notice period will commence shortly after the Preliminary Decision is signed and will run concurrent with public notice pertaining to the proposed area plan amendment and the LCO.

Regarding permits, on March 18, 2013, CBJ obtained a Department of the Army permit, POA-2011-924-M1. The Corps modified the permit on April 4, 2013. The Department of Environmental Conservation waived its State Water Quality Certification requirement on May 10, 2013. Thus, all requisite permits have been obtained by CBJ.

### **DISCUSSION AND ALTERNATIVES:**

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<sup>14</sup> See [http://dec.alaska.gov/Applications/SPAR/CCReports/Site\\_Report.aspx?Hazard\\_ID=3269](http://dec.alaska.gov/Applications/SPAR/CCReports/Site_Report.aspx?Hazard_ID=3269) (sediments under the CBJ cruise ship dock are contaminated with polycyclic aromatic hydrocarbons).

<sup>15</sup> See Also Alaska Department of Environmental Conservation, State Water Quality Certification, August 15, 2012.

<sup>16</sup> ADL 2335 (231.51 acres of tide and submerged land was conveyed to CBJ on February 7, 1962). ATS 3, which depicts the conveyed land, was filed on June 9, 1961.

<sup>17</sup> The majority of the actual project development involved in the project occurs on CBJ tidelands, and only the new mooring and breasting dolphins on the southeastern end of the South Berth are within State land. The remainder of the conveyance request involves submerged land but not land that will be directly altered by the project. See Attachment A.

### **Compliance with Qualifications under AS 38.05.825:**

Unless it is found that the public interest in retaining the land in State ownership clearly outweighs CBJ's interest, AS 38.05.825(a) requires DMLW to convey to CBJ tide and submerged lands suitable for occupation and development when requested by CBJ providing that the following requirements are met:

- (1) the land is within or contiguous to CBJ boundaries;
- (2) the use would not unreasonably interfere with navigation or public access;
- (3) CBJ has applied for conveyance;
- (4) the land is not subject to a shore fisheries lease under AS 38.05.082;
- (5) the land is classified for waterfront development or another use consistent or compatible with a land use plan adopted by CBJ, or the proposed use of the land is consistent or compatible with a land use plan adopted by CBJ or DMLW; and
- (6) the land is required for a public or private development approved by the municipality.

In addressing each of the above statutory qualifications under AS 38.05.825(a), DMLW determines the following:

Public Interest: From its analysis thus far, it appears to DMLW that conveying the tide and submerged parcel in Gastineau Channel adjacent to CBJ's existing downtown cruise ship docks would facilitate municipal development for public use. To-date, DMLW has not received any comments from the public or agencies concerning the State's public interest in retaining the requested parcel. At this time, DMLW believes there are no other overriding State interests. DMLW will entertain comments from several adjoining neighbors, agencies, and other interests and make a determination; however, currently it appears to DMLW that the public's interest in retaining the land in State ownership does not outweigh CBJ's development interest.

Location: The land is within the boundary of the municipality and meets the first requirement listed above.

Navigation: The Juneau harbor is the site of existing cruise ships docks. Multiple maritime uses occur within the harbor and have occurred for many years. CBJ's proposed development will expand the existing cruise ship docks and to some extent encroach on navigable waters by virtue of the offshore moorages. However, CBJ has modified its project to accommodate vessels needing access to the Taku Fisheries Dock or to the Fishermen's Memorial during the Blessing of the Fleet. Additionally, lightering boats and float plane operations will continue seaward and north of the project.<sup>18</sup> CBJ has obtained ship simulator evaluations of the planned moorage operations indicating that the project design is safe and will allow cruise ships to enter and depart from CBJ's docks without undue disruption.<sup>19</sup> Thus, DMLW finds that the second requirement listed above has been fulfilled and that the use will not unreasonably interfere with navigation.

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<sup>18</sup> CBJ Planning Committee Minutes, June 26, 2012; Port of Juneau Supplemental Project Narrative, June 15, 2012.

<sup>19</sup> Correspondence Captain Ed Page, USCG, Executive Director Maine Exchange of Alaska, June 12, 2012.

Public Access: Also, as required by number two above, 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: CBJ submitted an application for conveyance on December 1, 2011, fulfilling the third requirement listed above.

Shore Fisheries Leasing: The land is not subject to a shore fisheries lease, and as such the fourth requirement listed above is fulfilled.

Land Classification: The land classification is in the process of being amended via a plan amendment and land classification order to add the classification of “Waterfront development land” to the JSLP as required by number five above. Adding this classification is necessary for conveyance under AS 38.05.825 (see the “Planning and Classification” section for additional details).

Municipal Approval of Development: On June 26, 2012, CBJ’s Planning Commission approved the development of the two new cruise ship docks, and this action fulfills the sixth requirement listed above.<sup>20</sup> An appeal was filed along with two interventions to the appeal. On January 7, 2013, the Assembly of CBJ affirmed the Planning Committee’s decision.<sup>21</sup>

Based on the foregoing, CBJ’s conveyance request appears to meet all of the relevant requirements of AS 38.05.825.

### **Alternatives considered:**

1. Approve the proposed conveyance. CBJ has the ability to manage the parcel, including the two new cruise ship docks. The project is of local, public interest and the development is needed to accommodate new and larger cruise ships and to update the older berthing facilities. The project would provide economic development to the State.
2. Deny the proposed conveyance. DMLW would continue to manage the parcel and CBJ would need to acquire authorization for development of the site under a lease from DMLW or CBJ would need to alter its development plans to exclude the requested parcel of tidelands.

Preferred Alternative: Alternative No. 1 is the preferred alternative and supports the economic development of CBJ and the State. Consistent with the intent of AS 38.05.825, development of this parcel will serve the needs of the community of Juneau, and the requested acreage of 17.87 acres is reasonable given the size and scope of the project. Further, facilitating community development activities in Juneau indirectly provides economic benefit to the State by encouraging settlement and related

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<sup>20</sup> CBJ Planning Commission Minutes June 26, 2012, pp. 17 & 20.

<sup>21</sup> Appeal of Planning Commission Notice of Decision USE2011-0030 (there was no appeal to the Superior Court following this decision).

economic activity. Conveyance of the parcel is preferable to a long-term lease in terms of planning and efficiency for CJB, and the parcel is adjacent to land already owned by CBJ. Additionally, CBJ has obtained the requisite permits and the project meets the intent of the JSLP. DMLW believes that the parcel complies with the requirements of AS 38.05.825, assuming that the JSLP is amended to include the designation of Waterfront development and the classification of Waterfront development land. Unless public and agency review demonstrates that the parcel or portions of the parcel do not qualify for conveyance under AS 38.05.825, or that the public interest in retaining the parcel clearly outweighs the municipality's interest in obtaining the parcel, DMLW intends to convey the requested parcel in Gastineau Channel subject to completion of an ATS.

## **RECOMMENDATIONS:**

DMLW recommends conveyance of the submerged land parcel described herein to CBJ, subject to the following conditions:

1. The Final Finding and Decision will be issued after the LCO is signed and the JSLP has been amended to include the designation of Waterfront development and classification of Waterfront development land.
2. Pursuant to AS 38.05.825(c), land management authority shall be granted upon the effective date of the Final Finding and Decision unless an appeal is appropriately filed. If an appeal is appropriately filed, the decision is stayed pending the outcome on appeal.
3. The conveyance shall be subject to valid existing rights, all required easements and the following conditions: (1) CBJ may lease the conveyed parcel but may not sell it; (2) title to and management authority for the parcel conveyed under this authority reverts to the State upon dissolution of the municipality; and (3) CBJ takes management authority and title to the submerged lands subject to the irrevocable rights of the public under the Public Trust Doctrine.
4. State patent will not be issued until completion of the required ATS for the parcel.
5. Survey costs shall be borne by CBJ.
6. Pursuant to AS 38.05.125, the mineral estate shall not be conveyed to CBJ.
7. Pursuant to AS 38.05.127, it is not necessary or reasonable for the parcel to be subject to a public access easement.
8. The parcel of tide and submerged lands cannot be sold.

Following the public for this Preliminary Decision, DMLW will issue a Final Finding and Decision which will incorporate changes justified by comments during the agency and public review process. Those interested in how this issue is decided should submit written comments regarding this issue and read the final decision that follows. DMLW will provide notice of the final decision to all persons who submit written comments during the public notice period.



Prepared by:

  
Anne L. Johnson

Natural Resource Manager

11/7/13  
Date

The preliminary decision 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.

  
David L. Kelley  
Southeast Regional Manager

11/7/13  
Date

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

April 15, 1981  
Date

## **PUBLIC NOTICE, FINAL DECISION AND APPEAL PROCESS:**

In accordance with the provisions of AS 38.05.945, public notice seeking comments on this preliminary decision will be given to CBJ, adjacent landowners, Southeast Soil & Water Conservation District, Sealaska Corporation, Southeast Alaska Conservation Counsel, Kootznoowoo, Inc., Goldbelt, Inc., and the Douglas Indian Association. Additionally, two Juneau post offices will be requested to post the notice, and it will be available on the Internet as the Alaska Public Notice System website, which can be accessed at [www.state.ak.us](http://www.state.ak.us) (Click on "Notices" at the top of the page).

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 907-465-3886, or by electronic mail to [Anne.Johnson1@alaska.gov](mailto:Anne.Johnson1@alaska.gov) by the close of business on Monday December 9, 2013 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 DNR may modify this decision based on public comments received.

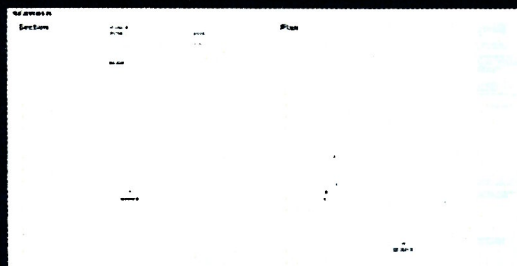
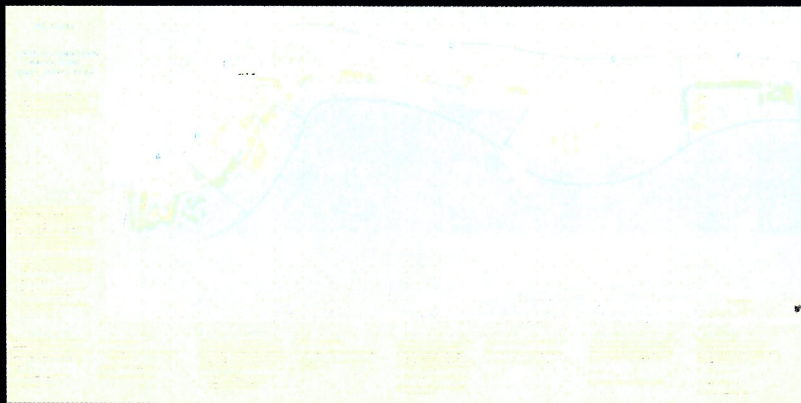
If DNR determines that public comments in response to this notice indicate the need for significant changes to the decision, additional public notice will be given. If no significant changes are required, the preliminary decision, after any necessary minor changes, will be issued as a final decision. 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.

Attachment A: CBJ's Development Plan.

Attachment B: Site plan showing the existing boundary of ATS 3 and the proposed expansion.

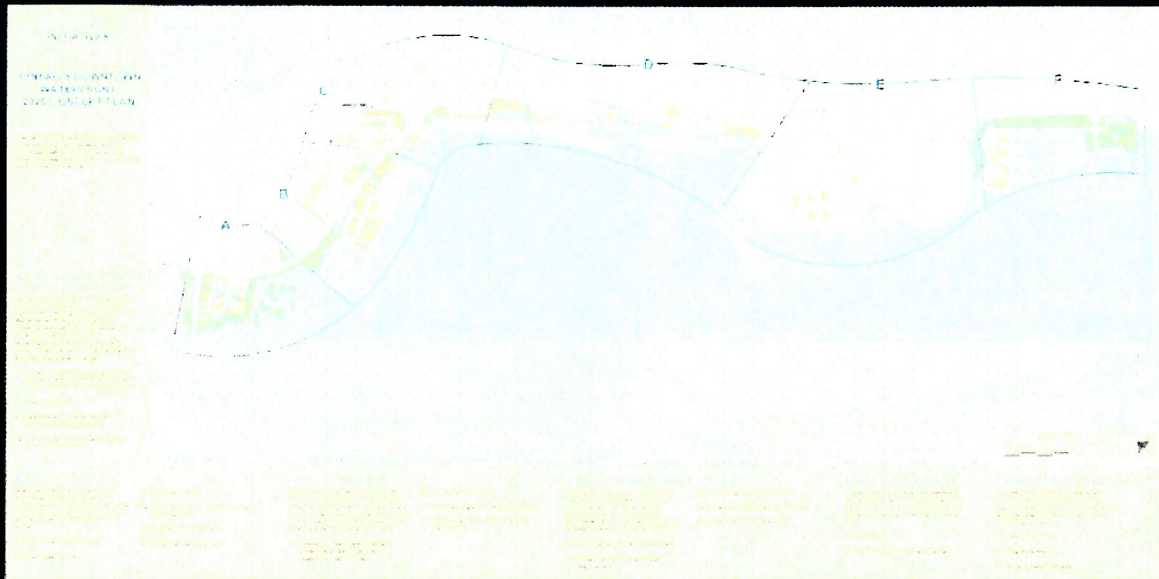
# The Future of Juneau's Waterfront

## The Seawalk and Juneau's Long Range Waterfront Plan





# Juneau's Downtown Waterfront Projects



## LONG RANGE WATERFRONT PLAN

The City & Borough of Juneau (CBJ) has several downtown waterfront projects in various stages of development. The purpose of this exhibit is to help consolidate information for these waterfront projects, to show how our downtown waterfront will be changing in the next few years.

In 2003, the CBJ undertook an extensive planning process to help shape the future of our downtown waterfront. The result was the Long Range Waterfront Plan (LRWP) adopted by the CBJ Assembly in 2004. The LRWP directs and provides background for each of the projects we construct along the downtown waterfront.

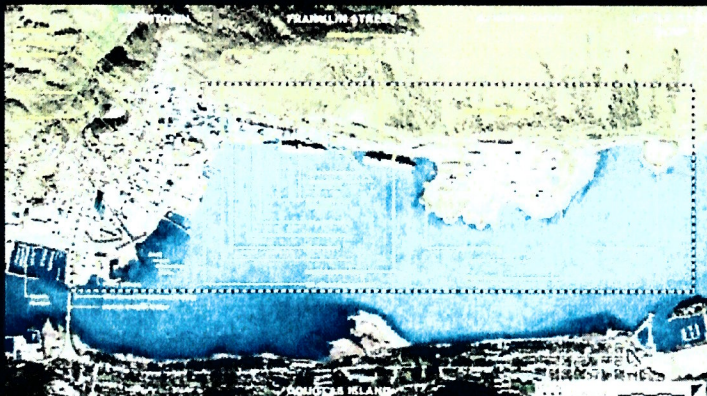
Through the LRWP, four major goals for improvements to the downtown waterfront were formed:

- Enhance community quality of life.
- Strengthen tourism product offerings as well as downtown retail, entertainment, residential and service activities.
- Improve Juneau's image and attractiveness for investment; and,
- Recognize all current waterfront uses.

The study area associated with the Long Range Waterfront Plan extended from the Juneau Douglas Bridge found at the north end of the Study Area south along Gastineau Channel to the Little Rock Dump.

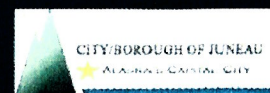
The study area was broken down into six distinct areas, each of which has a central theme/ goal to help direct future development. These six sections are shown in the plan above.

To connect each of these areas, it was envisioned that a seawalk run the entire length of the downtown waterfront to unify the waterfront and its various diverse uses, creating a tremendously useful recreation, mobility, and social feature for residents and visitors alike.



To learn more about the Long Range Waterfront Plan and to dig deeper into the details, please visit the following website for the entire plan:

[http://www.juneau.org/plancomm/Final\\_LRWP\\_112204.php](http://www.juneau.org/plancomm/Final_LRWP_112204.php)









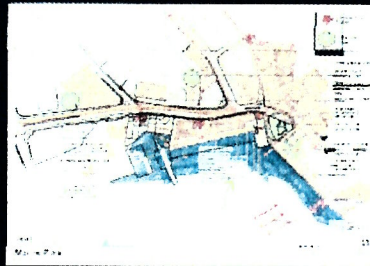
# Juneau's Downtown Waterfront Projects

## AREA C

### MARINE PARK/ SEAWALK



An aerial view shows the existing conditions through the project area.



The existing dock/ seawalk currently dead ends at the lightering float shown above. The wall be removed as part of the 16B project, allowing the seawalk to continue.

Area C of the LRWP focuses on the historic district aspects and attributes of the seawalk and expansion of Marine Park. The Merchant's Wharf building and Wings Airways are seen as important elements of Juneau's historic waterfront uses and the LRWP encourages the preservation and celebration of aviation and waterfront history throughout the seawalk in this area.

The Marine Park project is also known as the Steamship Wharf Phase II project. The project was originally slated to be developed shortly after the Steamship Wharf project was completed. However, with the uncertainty of how the CBJ Docks in the area would be developed, the plan was put on hold. Now that CBJ Docks & Harbors has come forward with a plan for the Cruise Ship Dock Improvements (currently called plan 16B), planning and design of the Marine Park area and seawalk from Marine Park to the support has begun.

The goal for a seawalk in this area is to continue the existing seawalk south of Marine Park through Merchant's Wharf, Wings Airways, and the Seadrome building, eventually connecting back to Egan Drive somewhere around Willoughby Avenue. How the seawalk maneuvers through the private property in this area will be directed by the private property owners. Currently the seawalk dead ends at the lightering float in Marine Park. This float/ ramp will be removed after the first section of 16B is constructed. This will allow for the seawalk to continue in a relatively direct route along the waterfront.

Marine Park serves as a major node, the end or beginning point to several major thoroughfares, in downtown Juneau. Marine Park is the sole downtown waterfront park and is open to the public all year. Maintaining the existing function of the park, while looking to take advantage of possible park expansion, are major goals for the park.

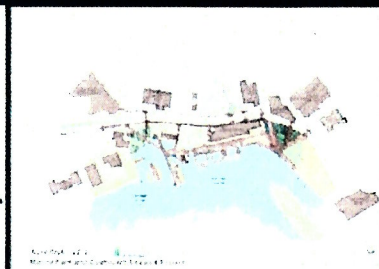
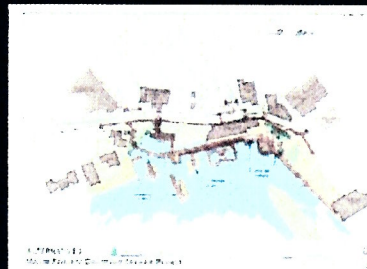


The Alaska Department of Transportation has a project that extends from Whittier Avenue to Main Street. The purpose of this project is to enhance pedestrian and bicycle safety/ access, strengthen the retaining wall next to Merchant's Wharf, and re-pave the road surface.

The Marine Park/ Seawalk project is scheduled to coincide with Docks & Harbors 16B project, with construction beginning in 2013.



The seawalk is proposed to run along the waterfront of the Merchant's Wharf building.



Above are three alternatives for the project. After public meetings and comment it is anticipated that one final concept will be developed that contains elements from each of the three plans.



The existing Marine Park/ Seawalk conditions. With AADOT looking to implement improvements to Egan Drive from Whittier to Main, Docks & Harbors Cruise Ship Terminal Improvements, 16B, and the Marine Park/ Seawalk project, this area will look quite different over the next three to five years.

CBJ Project Manager: Stan Strick, Engineering Department 586-6897

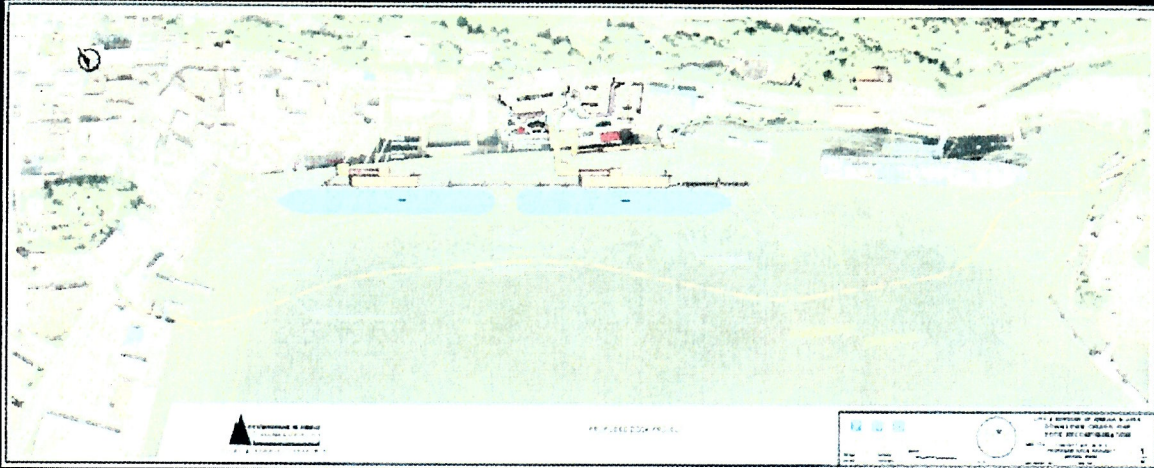




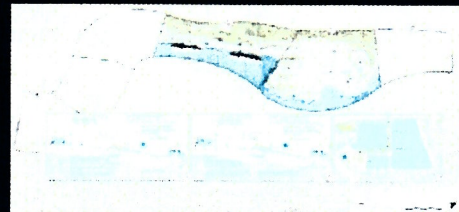
# Juneau's Downtown Waterfront Projects

## AREA D

### CRUISE SHIP DOCK IMPROVEMENTS

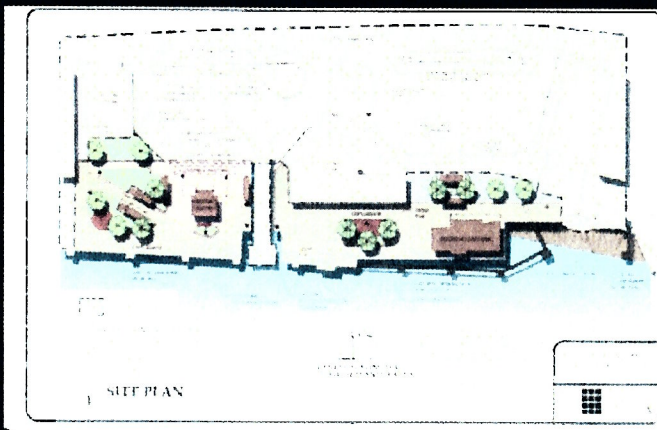


The Downtown Cruise Ship Dock Improvement Project is a \$61 million dollar, multiyear endeavor that will reconfigure Juneau's Port by installing 2 new concrete floating berths to accommodate today's panamax sized cruise ships. Each berth will be 300 to 400 feet in length, 50 feet wide and will be accessed by 2 transfer bridges capable of supporting emergency and service vehicles.

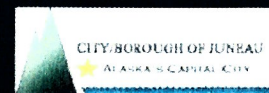


The project will be divided into three phases. Phase 1 will reconstruct the uplands and some decking around the Mt. Roberts Tram building during the winter of 2012. This work will reorganize the public spaces, commercial loading zones, and wood decking. In addition to improvements to the parking lots, the new seawalk will be connected with the existing northern section of seawalk and the infrastructure necessary for future power, water and sewer services to the berths will be constructed.

Phase 2 will construct the South Berth during the winter of 2013 followed by the North Berth in the winter of 2014. Construction of both berths will involve the installation of over two dozen diameter steel piles that are 4 feet in diameter that will be driven into the harbor's bedrock bottom. The concrete berths will be constructed at one of a handful of large marine facility fabricators and towed to Juneau for installation. Other improvements include a new small vessel moorage float, updated lighting and security features. The project is expected to be completed for the spring of 2015.



To learn more about the project please visit the project website: [http://www.juneau.org/dock\\_improvement](http://www.juneau.org/dock_improvement)

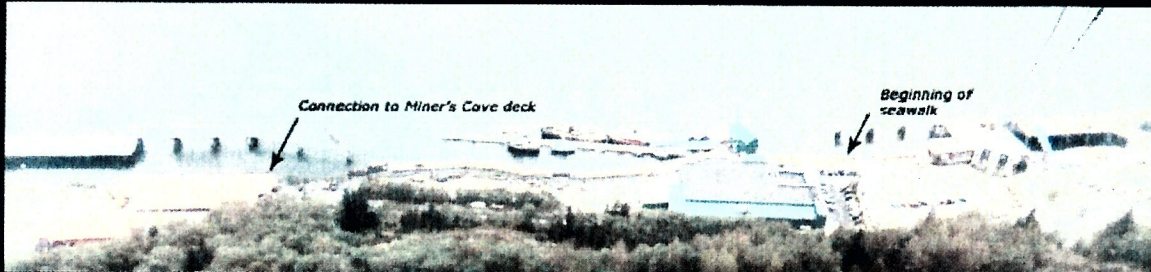




# Juneau's Downtown Waterfront Projects

## AREA D

### TAKU FISHERIES SEAWALK



The Long Range Waterfront Plan (LRWP) recognizes the segment from Taku Fisheries to Miner's Cove as a key connection within the tourism district of downtown that illustrates the "working waterfront" of Juneau.

The Taku Fisheries to Miner's Cove segment begins south of the Tram plaza and continues south past Taku Fisheries to the Miner's Cove building. The boardwalk follows the waterfront and passes the Fishermen's Memorial, the outdoor restaurant patio for the Twisted Fish, the Taku Fisheries fish processing plant, the Intermediate Vessel Float and connects to the deck at Miner's Cove which then connects to the Franklin cruise ship dock.

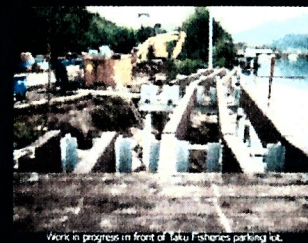
The biggest challenge encountered in the design and planning of this seawalk segment was an area of conflict where the seawalk crosses the fish transport route from the docks into the fish plant. Fishing boats tie up to the icehouse dock and the fish is removed from the boats and carried in large plastic totes by forklifts into the building. During salmon season the forklifts can be running all day long unloading fish for processing. To minimize this conflict, the Refrigerated Seawater (RSW) tanks were installed.

With the RSW tanks, during the busy salmon season, fish are pumped from the boat into a pipe that runs under the seawalk to the tanks. A conveyor carries the fish from the pipe up 30 feet to the top of the tanks where workers sort the fish and then place them in icy cold water to await final grading, freezing and shipment. Handling of the fish is minimized which in turn results in a higher quality product. The RSW tank ran its first season this year and significantly reduced forklift traffic across the seawalk improving pedestrian safety and viewing opportunities.

The total project cost to the City and Borough of Juneau for the construction of the seawalk and associated site improvements was approximately \$3.3 million. The funding is provided by marine passenger fees.

The challenges of coordinating fish and people passage as well as the large area of private property to be crossed resulted in approximately three years of negotiations between the City and Borough of Juneau and Taku Fisheries. The final agreement involved a transfer of easement rights whereby the CBJ relinquished existing easement and Taku Fisheries granted additional easement rights. Additionally, the CBJ agreed to fund the purchase of the RSW tank to mitigate the conflict of pedestrian crossing and fish transport.

This stretch of seawalk is the first significant length of seawalk constructed and provides an important connection for tourists visiting Juneau as well as locals who would like to enjoy the waterfront views and activity.



Work in progress in front of Taku Fisheries parking lot.



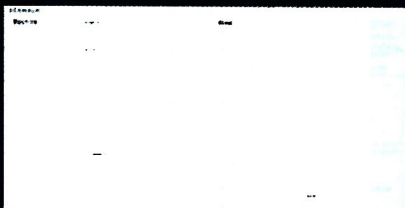
The parking lot on the north side of Taku Fisheries building was reconstructed with a new layout.



The completed seawalk approaching the Twisted Fish. Taku Fisheries' new RSW fish processing system is visible in the background.



The completed seawalk approaching the Taku Fisheries building from the south.



Typical seawalk design standards set in the LRWP.



The south end of the completed seawalk. Just outside the railing is a water sculpture.



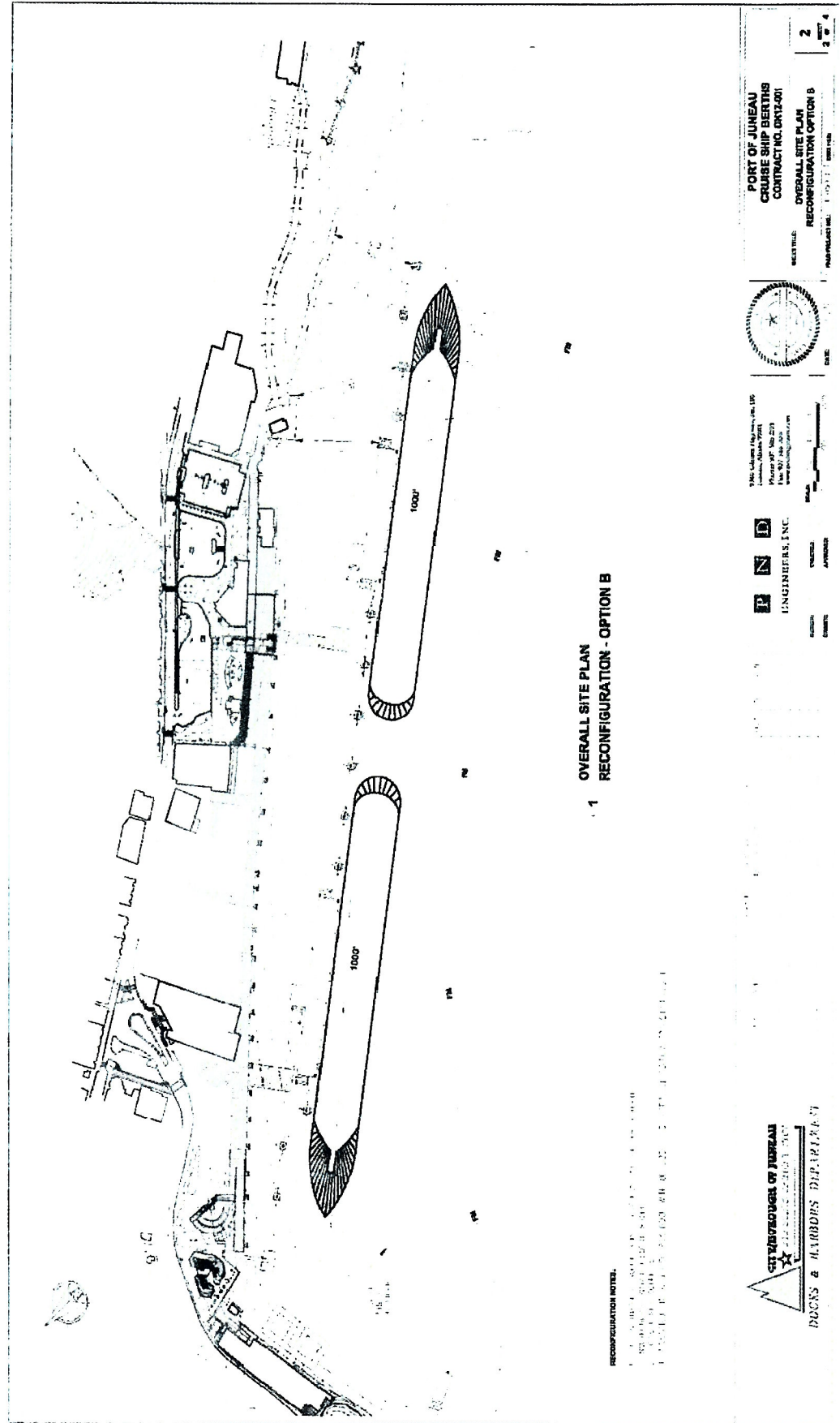
The north extent of this completed section of seawalk.

Prior to the construction of this seawalk segment pedestrians crowded along a narrow sidewalk on South Franklin Street to reach the Franklin Dock, the Rock Dump area or Ihane. Moving pedestrians off the busy street and onto the waterfront improves the safety of this heavily traveled route but also improves the experience. First time visitors to Juneau can enjoy view of the mountains of Douglas, the boats and activity in Gastineau Channel, and the sights, sounds and smells of the ocean. Juneau residents can now continue their walk along the waterfront and enjoy the changing waterfront activity throughout the seasons.





# Approved Layout





Attachment G

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

**LAND CLASSIFICATION ORDER**  
**NO. SE-93-00-004A07**

- I. Description: Tide and submerged lands within Gastineau Channel containing approximately 542.2 acres located south and west of downtown Juneau within sections 20, 22, 23, and 25 of Township 41 South, Range 67 East of Copper River Meridian, Alaska, and adjacent to and seaward of Alaska Tideland Survey 3, and referred to as Subunit 6a8 in the Juneau State Land Plan.
- II. The designations and classifications identified in Part III are based on the Plan Amendment to the Juneau State Land Plan, specifically Region 6a8.

Area Plan: Juneau State Land Plan  
Revised dated: \_\_\_\_\_, 2013.

III.

Description	Acreage	Authority	Existing Designations	<b>Additional Designation</b>	Existing Classification	<b>Additional Classification</b>
Subunit 6a8 of the Juneau State Land Plan	542.2	Submerged Lands Act	Fish and Wildlife Habitat & Fish and Wildlife Harvest	Waterfront Development	Wildlife Habitat Land	Waterfront Development Land

- IV. This order is issued under the authority granted by AS 38.04.065, AS 38.05.300, AS 38.05.300 to the Commissioner of the Department of natural Resources. The above described lands are hereby additionally designated and classified as indicated. Nothing shall prevent the additional designation and reclassification of these lands if warranted in the public interest.

Approved: \_\_\_\_\_ Date: \_\_\_\_\_

Joe Balash, Acting Commissioner

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

**Juneau State Land Plan Amendment  
Management Subunit 6a8  
ADL 108124**

The Commissioner of the Department of Natural Resources finds that the following amendment to the Juneau State Land Plan, described more fully in the Attachment, meets the requirements of AS 38.04.065 and 11 AAC 55.010-030 for land use plans and hereby adopts the amendment. The Department of Natural Resources will manage State lands within the area of the revision consistent with this additional designation.

- Additional Designation: Waterfront development
- Additional Classification: Waterfront development land

This amendment to Management Subunit 6a8 (Juneau waterfront) affects approximately 542.2 acres as depicted on Plan Map 'Region 6 – Juneau', in the Juneau State Land Plan (p. 3-119).

Concur: \_\_\_\_\_  
Brent Goodrum, Director  
Division of Mining, Land and Water

Date: \_\_\_\_\_

Approved: \_\_\_\_\_  
Joe Balash, Acting Commissioner  
Department of Natural Resources

Date: \_\_\_\_\_



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

**Attachment to the Area Plan Amendment  
Juneau State Land Plan**

**Management Subunit 6a8**

Name: Tide and submerged lands within Gastineau Channel containing approximately 542.2 acres located south and east of downtown Juneau within section 20, 22, 23, and 25 of Township 41 South, Range 67 East of Copper River Meridian, adjacent to and seaward of Alaska Tideland Survey (ATS) 3, and referred to as Subunit 6a8 in the Juneau State Land Plan.

Authority: The authority to revise plans derives from AS 38.04.065(b), and 11 AAC 55.030(f) defines when a revision constitutes a plan amendment.

Current Plan: The Juneau State Land Plan (JSLP) designates Subunit 6a8 as Fish and Wildlife Harvest (Hv) and Fish and Wildlife Habitat (Hb). These designations both convert to the classification of "Wildlife habitat land."<sup>1</sup> Within the JSLP, management intent for the submerged lands off of the Juneau waterfront is as follows:

[T]o provide both land and water space for uses and activities which are directly related to maritime activities while minimizing significant adverse impacts on habitat and harvest for which these subunits are co-designated. Maritime activities include private boating of all types, tourism (including cruise ships, transient pleasure vessels, and floatplanes), commercial fishing, use by charter boat, floatplane activity, and any other activities involving the human use of waterbodies for sport, recreation, or commerce. Although all existing developments occur on non-state tidelands, portions of future developments such as breakwaters, marinas, and docks may require authorizations for use of state tidelands. Development directly related to maritime activities along the edges of the subunits that extend onto state tidelands and submerged lands are an allowable use if they do not pose hazards to navigation. Fill may be authorized in these subunits if consistent with the Juneau Coastal Management Plan and the guidelines in this plan.<sup>2</sup>

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<sup>1</sup> Area plan "designations" indicate in general how the land described in the plan is to be managed by DNR. The two-letter designations indicate the primary and co-primary uses and resources for each subunit as designated by the plan. (JSLP 3-1) To implement the plan on state lands, DNR must "classify" state lands to reflect the intent of the land use designations made by the plan. Land classification is the formal record of uses and resources and is statutorily required for land planning. (AS 38.05.300; 38.04.065; 11 AAC 55.0200; JSLP 4-1 & 4-3)

<sup>2</sup> JSLP, 3-116.

The JSLP description of management intent is consistent with the current and future maritime activities along the Juneau waterfront. The JSLP provides further background information on existing and future development along the Juneau waterfront and states that “Subunit 6a8 includes the tidelands and submerged lands off the Juneau waterfront. Most developments are on CBJ (City and Borough of Juneau) and privately-owned tidelands...There are a number of large docks and buildings on pilings and tidelands fill lining the downtown Juneau waterfront. These docks serve a number of private and public purposes.” Additionally, the JSLP notes: “The waters off the Juneau waterfront are heavily used by pleasure boats, commercial fishing boats, barges, and cruise ships traveling and mooring in the channel. The channel is also used for floatplane landings and takeoffs. These waters are also valuable for sport fishing, wildlife viewing, and sightseeing. The entire area is in the view shed of downtown Juneau and Douglas Island.”<sup>3</sup> Thus, the JSLP recognizes the significant maritime development activities that have existed and will continue to exist along the Juneau waterfront.

Proposed Plan Amendment: The amendment will more accurately represent the existing and future maritime development activities within Subunit 6a8. Following the amendment, the JSLP Subunit 6a8 will retain the two existing designations of Fish and Wildlife Harvest (Hv) and Fish and Wildlife Habitat (Hb). The JSLP will also retain the attending classification of Wildlife habitat land and the current description of management intent. The JSLP will be amended to add the designation of Waterfront development (Wd) and add the classification of Waterfront development land to the existing designations and classification of Subunit 6a8.

Explanation: On any parcel of land, up to three classifications may be used where the dominance of a particular use cannot be determined.<sup>4</sup> As discussed in the JSLP, the submerged lands off the Juneau waterfront involve significant maritime activities, including the daily arrival and departure of several cruise ships between April and September and associated float plane and lightering activity and private boating of all types. Additionally, there is some fishing activity year round.

As noted above, the JSLP currently has designated the Juneau waterfront as Fish and Wildlife Habitat (Hb) and Harvest (Hv). Habitat (Hb) is defined as the second-most valuable of habitat types. “Hb” habitats are highly productive components of the ecosystem where alternation of the habitat or human disturbance would reduce the yield of fish and wildlife populations whether directly or cumulatively. Fish and wildlife harvest areas (Hv) are localized, traditional harvest areas of limited size where alteration of habitat could permanently limit sustained yield to traditional users; or areas of intense harvest where the level of harvest has or is projected to reach the harvestable surplus for the resource.<sup>5</sup> The Hb and Hv designations are classified as wildlife habitat land.<sup>6</sup>

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<sup>3</sup> JSLP, 3-114, 3-115.

<sup>4</sup> 11 AAC 55.040.

<sup>5</sup> JSLP 3-4.

<sup>6</sup> JSLP 4-3.

The plan amendment will add to the designation of Waterfront development and classification of Waterfront development land to Subunit 6a8. The JSLP defines Waterfront development as the use of tidelands, submerged lands, or shorelands for water-dependent or water-related facilities, usually for industrial or commercial purposes. Waterfront development includes: piers, wharves, harbors, log storage, log or mineral transfer facilities, seafood processing facilities, commercial recreational facilities, and other resource development support facilities.”<sup>7</sup> The addition of the designation of Waterfront development more accurately reflects the ongoing and significant maritime commercial activities of the Juneau waterfront associated with tourism. Tourism is the predominant industry along the Juneau waterfront from April through September.

Retaining the Habitat and Harvest designations and Wildlife habitat land classification is also appropriate since the area is vital to numerous fish and wildlife populations and these resources will continue to be available for harvest throughout the year. Retaining the current designation and classification will assure that the impacts future development may have on fish and wildlife populations and harvest activities will continue to be assessed and mitigated prior to the approval of such projects that may require the development and use of the tide and submerged lands near the Juneau waterfront.

Assessment: There are three possible alternatives to consider regarding Subunit 6a8 of the JSLP and the existing and future waterfront commercial activity. First, the JSLP could be amended to add Waterfront development to the existing designations. Second, the JSLP could be maintained as is with the current designations of Habitat and Harvest and existing classification of Wildlife habitat land without adding the Waterfront development designation and corresponding classification. Third, the JSLP could be amended to rescind the current designations and add Waterfront development as the sole designation and Waterfront development land as the sole classification.

The second option, maintaining the current designations without adding Waterfront development, would fail to reflect the ongoing and significant commercial development along the Juneau waterfront and as such would inaccurately portray existing and future conditions. The third option, rescinding the two current designations and classifications and adding Waterfront development, would also lead to an inaccurate outcome because the Juneau waterfront supports fish and wildlife populations and is open to harvest year round. Thus, of the three options, the most appropriate is to add Waterfront development to the two existing designations and Waterfront development land to the existing classification. This option is the best fit and most accurately reflects current and planned uses of the Juneau waterfront.

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<sup>7</sup> JSLP 3-6 (references to the now defunct Juneau Coastal Management Plan are not included).

AS 38.04.065(b) Requirements: The factors identified in this section of the statute have been considered in the Preliminary Decision for ADL 108124 and the proposed action is consistent with the statute.

Approved: \_\_\_\_\_

Date: \_\_\_\_\_

Joe Balash, Acting Commissioner, Department of Natural Resources