

STATE DOCK INFORMATION

November 3, 2016

In February of this year the State of Alaska (DOT&PF) offered to transfer ownership of the State-owned docks at Papke's Landing, Kupreanof, and Entrance Island to the Petersburg Borough along with \$732,883 in harbor deferred maintenance funds. Below are some of the questions the Borough has asked of DOT and the answers that were provided.

1) **Q:** Does transfer of the dock facility at Papke's Landing include the current parking area and launch ramp?

A: No, the transfer doesn't include the parking area and the launch ramp. DOT&PF only has rights to the timber approach pier, the gangway, and the floats.

Note: The current parking area is owned by DNR and the launch ramp (which is actually a log transfer ramp) is believed to be in USFS control.

2) **Q:** Will DNR allow the Borough to assume any management agreement of the tidelands they currently have with ADOT on these facilities, or if not, will the State issue agreements for the Borough? Can the Borough get a copy of these agreements? With tidelands leases there is no guarantee they will continue to remain, or not come with a fee. The Borough would want ownership of the tidelands or very firm agreements that there would not be a future liability in this area.

A: As far as I know there is nothing that prevents the Petersburg Borough from taking over the tidelands at these three harbors. The borough can apply for a conveyance of the tidelands per AS 38.05.127 or the borough could apply for a tideland lease at the three locations. Currently only DNR is allowed to assign management of the state tidelands. DNR issued DOT&PF tideland leases at these three sites. I can't speak for DNR, but as far as I know there is nothing that would prevent the Borough from assuming the tideland leases that DOT&PF currently holds. DNR may charge a fee. For the best answer, I recommend that you or your staff contact DNR to get the most accurate answers about their process. DOT&PF has transferred many harbors to municipalities, and I am not aware of any DOT&PF associated issues that prevented a transfer of the DNR tideland leases to a municipality. If the Borough was moving forward with a harbor grant project at one of these sites and DNR hadn't yet issued a tidelands lease to the Borough, DOT&PF would support and wouldn't stand in the way of the Borough's efforts. DOT&PF would grant whatever permissions are necessary for the successful completion of the Borough's harbor project(s).

Note: When the City of Petersburg applied for a conveyance of the tidelands at Scow Bay, it took 3 years for the conveyance to be finalized.

3) **Q:** Are there Army Corps permits in place? Can the Borough get a copy of them? Are they transferrable to the Borough? If not, does the State have a time frame from the Corps on when they are scheduled to dredge at any of these facilities so we could know how much time and money would need to be set aside for this maintenance issue?

A: I found the Corps permits for Entrance Island and Papke's Landing. We are unable to find a copy of the Corps permit for the Kupreanof float – the Corps does not have a copy of the original permit either. At this point, a new Corps permit will be required for any work done at the Kupreanof Float. As far as I know there shouldn't be a problem transferring the existing Corps permits to the Borough. DOT&PF has transferred many harbors to municipalities and there has not been any problems that prevented a transfer of the Corps permits. Although the Corps is responsible to dredge the Wrangell Narrows, the limits of the channel they maintain does not include the Papke's Landing and Kupreanof Floats. The Corps isn't responsible to dredge the Papke's, Kupreanof, and Entrance Island sites. DOT&PF has no plans to dredge these three harbor sites.

4) Q: Would the State of Alaska work with the City of Kupreanof to convey ownership of the Kupreanof dock directly to them?

A: AS.29.35.250(b) states that no city within a borough may exercise a borough areawide power unless authorized by borough ordinance. My staff performed a review of the borough's and the city's charters and ordinances. There is clear language in the borough charter that says only the borough has the power and jurisdiction over harbor facilities. Reference the following sections of the borough charter:

- Section 2.13 – Port and Harbor Jurisdiction says that "the assembly shall regulate the use and development of all waters and submerged lands which are subject to the jurisdiction of the borough."
- Section 14.06 – Areawide Powers says that "the following powers shall be exercised on an areawide basis" ...Item D. "The power to provide port and harbor facilities and services"

Note: The Borough Charter would need to be changed for the State to convey ownership of the dock directly to Kupreanof. Changes to the Borough Charter must be approved by the Borough voters during an election.

5) Q: The Transfer Project Agreement provided by the State states, "No Subsequent Transfer: The Municipality agrees, covenants and warrants that it shall not transfer title or control of the harbor facilities without the prior written approval of the State." If the Petersburg Borough were to accept ownership of the Kupreanof dock with the intent of conveying it to the City of Kupreanof, would the State of Alaska give the necessary approval?

A: The City of Kupreanof recently changed their city code and now has port and harbor powers similar to those of the borough. So there could be a transfer to the city by the borough, but it is complicated. The statutes (AS 35.20.060) require the department make sure that the city, after the borough transfers the harbor facility to the city, doesn't "sell, exchange, or otherwise dispose of the obsolete machinery, equipment, and material (i.e. the Kupreanof Float) if it is no longer needed, required, or useful." Or simply if the Kupreanof Float no longer has a transportation purpose. For example, the city can't change the use of the Kupreanof Float by selling it to a private developer or a local individual; or convert the float's use into a lodge, a shipyard or a park. That is why the Transfer Agreement has a section labeled "No subsequent transfer" without the state's approval.

There may be a compromise position concerning the Kupreanof Float that could be acceptable to all parties. The compromise is for DOT&PF to transfer the Kupreanof Float to the borough. The borough agrees to take on the ownership, but the borough could then transfer all maintenance and operational responsibilities at the Kupreanof Float to the City of Kupreanof. The borough would then be free of DOT&PF involvement to decide how to manage the Kupreanof Float. The borough could decide to keep 100% control, give control away to the city but keep a portion of harbor fees for using the Kupreanof Float for area wide harbor maintenance, or give control away and let the city keep all the fees.

If the borough is interested in the above compromise, then we are unlikely to force the borough into an all or nothing deal, i.e. that the borough has to also take the Entrance Island Float in order to get the Papke's Float.

6) Q: If the Borough does accept ownership of the Kupreanof dock, and then conveys it to the City of Kupreanof (with State approval) along with some of the deferred maintenance money received from the State, would the City of Kupreanof be eligible to use the deferred maintenance funds toward State matching grant funds (Tier I and Tier II) for the Kupreanof dock?

A: No, since the City of Kupreanof would not own the Kupreanof Float, the city would be ineligible to apply for the Harbor Facility Grant Program. The financial agreement terms, as described in the Transfer Agreement, are solely between the Petersburg Borough and the State of Alaska. The borough would need to keep the \$732,883 in a borough managed harbor enterprise fund or in an account solely for borough harbor needs. An interesting aspect of doing the bookkeeping this way is that the borough could use the above harbor transfer funds at any borough owned harbor facility and not only at the Papke's Landing, Kupreanof, or Entrance Island Floats. If the borough gave borough funds to the city, that would be a separate act of the borough and furthermore distinct from the Bill of Sale and the Transfer Agreement documents.

7) Q: If a State dock is conveyed to the Borough, could the Borough remove the dock in the future? Would removal of the dock require State approval?

A: Yes the borough could, after accepting ownership responsibility, remove a harbor facility. Removal of a harbor facility would not require approval from this department, although for record keeping we would like the borough to let us know. Permissions or approvals prior to removal may be required by another state or federal agency. For example, removed material must be disposed of properly in accordance with local and all state (DEC) and federal rules. If the borough comes to the decision point to remove a facility, I would recommend the borough perform further investigation of the removal and necessary steps to be undertaken for that specific facility at that time.