

March 1, 20120 (Updated 3/3)

TO: ASSEMBLY

FR: LIZ CABRERA

RE: PRELIMINARY DECISION – PETERSBURG BOROUGH MUNICIPAL LAND SELECTIONS ADL 108579

BACKGROUND: As you know, the Land Conveyance Section (LCS) of the Alaska Department of Natural Resources has issued a preliminary decision regarding lands to be conveyed to Petersburg. The lands covered under this decision are Petersburg's first set of selections made in March of 2016 comprising 1,813 acres.

In summary, the LCS is recommending Petersburg be conveyed 1,452 acres and be rejected for 143.347 acres and the preliminary decision postponed on 218.13 acres (Fall's Creek).

Deadline to submit comments to the LCS is March 12, 2021.

SUMMARY DRAFT COMMENTS:

1. The draft comments below concur with the decision to convey 1,452 acres and do not object to postponing the preliminary decision for Falls Creek.
2. The draft comments object to the following lands being retained by the state, but the Assembly should decide whether it would like these parcels conveyed to the borough. The draft comments related to these parcels are highlighted in yellow in the document below.

Blind Slough – Olsen's Log Dump. The conveyance would come with a right-of-way reservation to the federal government. The Assembly should consider the possibility of future maintenance requirements at the site, though I do not believe the state currently maintains the site beyond occasional plowing. See Map, page 34 of the Preliminary Decision.

Woodpecker Cove – Portion of Lot 3 adjacent to LTF. The LTF at Woodpecker Cove is listed as a DEC-contaminated site. The state is proposing to retain the parcel as well as surrounding parcels. The draft comments object to the state retaining half of Lot 3, which is a waterfront parcel located to the west of the LTF. The Assembly should consider the possibility of contaminants flowing onto Lot 3. See Map, page 35 of the Preliminary Decision.

3. The draft comments do not object to the state retaining the following lands:

Thomas Bay – Tract C. This is the gravel pit area at Thomas Bay. The borough can object, but the management intent adopted by the state is to retain these lands in state ownership.

NE Mitkof Rock Pit – This is located within the boundaries of the SE State Forest and cannot be conveyed. The original maps DNR provided showed these lands as VUU and selectable by the borough.

Blind Slough – Green's Camp. This parcel is located within Green's Camp and cannot be conveyed. The original maps DNR provided showed these lands as VUU and selectable by the borough.

Blind Slough – South Mitkof Ferry. This parcel contains the ferry terminal parking lot and the road connecting Mitkof Highway to the terminal.

4. The draft comments do not object with the state retaining reservation for public access along section lines (50' on each side of the line) and along navigable marine waters (50' above MHW). Also, there is no object to the state's public waters reservation along catalogued streams (50' above OHW). These are required by state law and the citations can be found in the preliminary decision document.

March 12, 2021

Ms. Mary Hermon
Division of Mining, Land and Water
550 West 7th Avenue, Suite 640
Anchorage, Alaska 99501

RE: COMMENTS FROM THE PETERSBURG BOROUGH REGARDING THE LCS PRELIMINARY DECISION – PETERSBURG BOROUGH MUNICIPAL LAND SELECTIONS ADL 108579

Dear Ms. Hermon,

The Petersburg Borough supports the LCS's decision to convey approximately 1,452 acres of state owned vacant, unappropriated, unreserved (VUU) general grant land.

FANSHAW BAY

The Petersburg Borough supports the LCS decision to convey approximately 33.35 acres in Fanshaw Bay to the Petersburg Borough.

The Petersburg Borough concurs with the ADFG finding that the proposed selection is more than 50' from the OHW mark of the unnamed stream (AWC#110-31-10100).

THOMAS BAY

The Petersburg Borough supports the LCS decision to convey approximately 38.83 acres in Thomas Bay to the Petersburg Borough. The Petersburg Borough concurs with the LCS finding that there are no inland waters subject to navigable or public water reservations on the lands proposed for conveyance. The Petersburg Borough has the following additional comments regarding statements in the preliminary decision:

ADL 105605. Private Easement. Please confirm in the Final Decision that this easement is located within Tract C and therefore is located on land rejected for conveyance.

ADL 106536, Quiet Title. Please confirm in the FFD whether this quiet title action is Tract B-2 and not selected by the municipality.

ADL 107637/ADL108804 Material Sale. Please confirm in the FFD that this material sale is within Tract C and therefore is located on land rejected for conveyance.

Forest Development Road 6256. Please confirm in the FFD whether FDR 6256 extends into Section 35 as shown on DNR maps.

ADL107968 Trespass. Please confirm in the FFD that this trespass parcel is located within Tract C and therefore located on land rejected for conveyance.

FREDERICK POINT

The Petersburg Borough supports the LCS decision to convey approximately 134.2 acres in Frederick Point to the Petersburg Borough. The borough notes the LCS has not stated any overriding state interest in Quarry #4 and a portion of Quarry #3 and these areas should be conveyed along with surrounding parcels.

Table 3, page 9, lists an Unnamed Creek at Frederick Point. The ADFG review makes no mention of this creek nor does a creek appear on any of the DNR maps or online map. Please provide additional information in the FFD regarding this creek to justify a public waters reservation.

ADEC identified an active contaminated site located at Frederick Point (Hazard ID 1762). The ADEC Contaminated Site Report (2015) states the site is located on "seven acres of land leased from the United States Forest Service." A legal description is provided: "Section 27, Township 058 South, Range 079 East, Copper River Meridian", which places the site in the downtown Petersburg area. The ADEC online mapper places the FAA beacon at Section 4, Township 059 South, Range 080 East, Copper River Meridian, which would not be within a parcel proposed for conveyance. The preliminary decision does not list any third-party interest related to the USFS, FAA or any other entity within the selected parcel. The LSC should disclose an accurate location of the hazardous site, including a legal description, and any encumbrances or third-party interests in its FFD so the borough may determine whether it wishes to accept conveyance of the parcel.

The Petersburg Borough has the following additional comments regarding statements in the preliminary decision:

ADL107872/ADL106863 Material Sale. Please confirm in the FFD whether the material sales are active as stated in Table 1 or closed.

ADL107871/ADL107614 Material Sale. Please confirm in the FFD whether the material sales are active as stated in Table 1 or closed.

NE Mitkof & Rock Pit

The Petersburg Borough supports the LCS decision to convey approximately 174.65 acres in NE Mitkof to the Petersburg Borough.

The Petersburg Borough has the following additional comments regarding statements in the preliminary decision:

ADL107870/ADL105928 Material Sale. Please confirm in the FFD whether these material sales are located on lands rejected for conveyance.

FDR 6206 Climber Rd. Please confirm in the FFD whether this road is located within the lands proposed to be conveyed.

Duncan Canal

The Petersburg Borough supports the LCS decision to convey approximately 144.7 acres in Duncan Canal to the Petersburg Borough.

The preliminary decision references an unnamed stream. Please provide additional information in the FFD regarding this stream and justifying a public waters reservation.

The ADFG finding also references associated wetlands and there is a separate reference in the decision document to an unnamed small lake subject to a public waters reservation in Table 3. 11 AAC 51.035 makes no mention of public water reservations along wetlands and the minimum size of waterbodies for designation is at least 10 acres. Anecdotal information suggests this is a beaver pond and does not appear to meet the minimum size requirement for a public waters reservation. LCS should clarify the waterbodies being reserved and provide evidence of the state's interest in the reservation under 11 AAC 51.035.

Falls Creek

The Petersburg Borough supports the LCS decision to convey approximately 100.78 acres at Falls Creek to the Petersburg Borough. The LCS references an unnamed minor trail/road on maps and in the preliminary decision document but does not list any third-party interest indicating a public access reservation or other interest in this unnamed minor trail/road. The borough is not aware of any minor trail/road at this location. The LCS should provide documentation of its existence and disclose any third-party interest or delete the reference in the FDD.

Regarding postponing the decision of 218.31 acres in Falls Creek, the borough has no objection as there is significant acreage left to adjudicate and Falls Creek can be included in a future preliminary decision document. The LCS should encourage ADFG to consult with the borough on an appropriate retention buffer for this location prior to deciding on conveyance.

Blind Slough

The Petersburg Borough supports the LCS decision to convey approximately 697.49 acres at Blind Slough to the Petersburg Borough.

The unnamed tributary (108-10550-2013) and unnamed creek (108-40-10576) do not appear to be located within the lands proposed for conveyance. Please clarify in the FFD.

[The borough notes the only state interest in Tract 37, "Olsen's Log Dump" is ADFG's recommendation that "an easement or right-of-way be reserved through the selection to the log transfer site to allow continued public use". ADFG does not recommend the state retain ownership. Neither DNR Division of Forestry nor DOT&PF indicated any state interest in this specific facility during their agency review in March of 2018 and again in October of 2020.

Access to Tract 37 is reserved along FDR 40101 and Tract 37 itself appears to be reserved as a ROW in PA 50-2015-0074. The state should convey these lands subject to the existing access reservations of the patent as well as any state public access dedication that currently exist. This would preserve the state's interest in the parcel.

The borough notes the Preliminary Decision does not list an easement for FDR 40101 or Tract 37 other than what is set out in PA 50-2015-0074. Regardless, the state can convey the parcel to the borough reserving any existing access rights.]

Woodpecker Cove

The Petersburg Borough supports the LCS decision to convey approximately 117.86 acres at Woodpecker Cove to the Petersburg Borough.

ADFG's recommendation for a public waters reservation of "several unnamed creeks" lacks sufficient information to answer basic questions (how many creeks are there? where are these creeks located? what is the basis for ADFG's 'prediction' regarding occupation by anadromous fish?), making it impossible for the borough to concur with or object to the finding or provide any meaningful response.

ADEC identified an active contaminated site located at Woodpecker Cove (Hazard ID 3871). Please confirm that this site is located in Tract 37 and Lot 2, Section 18, lands rejected for conveyance.

[The Division of Forestry requests a transition zone be retained alongside Tract 37. The DOF argues the buffer is necessary because development adjacent to the LTF facility is incompatible particularly for residential owners, but then also states the buffer is needed to allow for expansion or reconfiguration to accommodate "future multiple use management in the area."

Between the DOF's statement that it requires property for "future multiple-use management" and the management intent from the CSSAP that the area should be used for public recreation, the area surrounding the LTF site clearly is compatible with development and other uses. The borough has no objection to the state retaining Lot 2, which is directly adjacent to the LTF, but Lot 3 should be conveyed in its entirety to the borough.]

GENERAL COMMENTS

1. P. 2. The City of Petersburg was dissolved in favor of the Petersburg Borough in 2013. Please delete reference in the FFD.
2. P. 3. The first sentence appears incomplete. The second sentence indicates the State "holds fee title to the land and mineral estates" listed in Table 1 "through either Patent or Tentative Approval (TA)". None of the lands listed in Table 1 are held through Tentative Approval (TA). The FFD should make clear the state holds a Patent for all lands adjudicated in this decision.
3. P. 6. The James J. Johnson Airport in Petersburg is owned by the State of Alaska.
4. P. 7. The small road system in Thomas Bay developed as a result of state timber sales and an active material sale in the area. There is no "developing subdivision" in Thomas Bay.
5. P. 7. A land survey should not be required in order to make a determination of OHWM and MHW. The FFD should be amended to read, "If no state approved survey exists, a survey will determine the Ordinary High-Water Mark (OHWM)....".
6. P. 8. The borough requests the following amendment in the FFD: All tidal waters are considered navigable under the Submerged Lands Act...The MHW is established at the time of survey, unless a state approved survey exists.
7. P. 8. The borough notes that the LCS does not propose any alternative upland access routes to be reserved under 11 AAC 51.045(d)(1).
8. P. 8. The LCS has identified only marine waters as navigable waters and subject to a 50' public access easement. The borough concurs with this determination.

9. p 8. The borough concurs with the LCS that the beds of public waters are to be conveyed to the borough with the adjoining approved lands.

10. p.22 The borough notes that no waters navigable in fact have been identified by the state in this decision.

11. p 22. The borough requests the following language be amended in IX.B.2. "...location of the MHW and OHWM of navigable waters...to determine the specific area to be retained by the state, unless a state approved survey exists.".

12. p 22. The borough requests the following language be amended in IX.B.3. "...location of the OHWM of public waters will be determined at the time of survey, unless a state approved survey exists.".

Thank you for the opportunity to comment.