

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

PRELIMINARY DECISION
CONVEYANCE OF STATE LAND UNDER AS 29.65.010

PETERSBURG BOROUGH MUNICIPAL LAND ENTITLEMENT SELECTIONS ADL 108579
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PUBLIC COMMENT PERIOD ENDS 4:30 PM, FRIDAY, MARCH 12, 2021

I. PROPOSED ACTION

Preliminary Decision: Petersburg Borough Municipal Land Entitlement Selections – ADL 108579

Attachment A: Vicinity Map
Attachment B: Fanshaw Bay Map
Attachment C: Thomas Bay Map
Attachment D: Frederick Point Map
Attachment E: NE Mitkof & Rock Pit Map
Attachment F: Duncan Canal Map
Attachment G: Falls Creek Map
Attachment H: Blind Slough Map
Attachment I: Woodpecker Cove Map
Attachment J: Public Notice

Primary Proposed Action: The Alaska Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) proposes to convey in part, postpone in part, and reject in part, lands selected by Petersburg Borough (Borough) in partial fulfillment of their general grant land entitlement under AS 29.65.010 *Determination of Entitlement of Boroughs and Unified Municipalities*.

The Borough selected twenty parcels contained in Region 1 (Sumdum-Stephens Passage) and Region 3 (Petersburg) as identified in the Central/Southern Southeast Area Plan¹ (CSSAP). The parcels comprise approximately 1,813 acres adjudicated in this decision.

LCS proposes to convey approximately 1,452 acres of state owned vacant, unappropriated, unreserved² (VUU) general grant land. Regarding these parcels, LCS has determined that there are no over-riding state interests that merit retaining these selections in state ownership.

LCS proposes to postpone conveyance of approximately 218 acres. Regarding these parcels, LCS has determined that there may be over-riding state interests that merit retaining these selections in state ownership and will postpone adjudication of these lands.

The *Central/Southern Southeast Area Plan* (CSSAP) adopted November 2000 determines the management intent, land-use designations, and management guidelines that apply to all state lands in the applicable planning area. This plan forms the basis for the land use classifications that constitute vacant, unappropriated, unreserved land for purposes of determining the eligibility of state land for potential conveyance to a municipality under AS 29.65 *General Grant Land*.

² *Vacant, unappropriated, unreserved* (VUU) land is general grant land patented or tentatively approved to the State from the United States, excluding minerals as required by 6(i) of the Alaska Statehood Act, and is conveyable under the Municipal Entitlement Act (AS 29.65).

LCS proposes to reject the conveyance of approximately 143 acres of Borough selections because the land is ineligible for conveyance or LCS has otherwise determined it is not in the State's best interest to convey those lands out of state ownership.

Public Notice of Proposal: In accordance with *AS 38.05.945 Notice*, during a period of at least 30 consecutive days, the public is invited to submit written comment on this Preliminary Decision (PD).

See **Section VII. Submittal of Public Comments** and *Attachment J: Public Notice* for details on how to submit comment for consideration. If, after consideration of timely, written comments, LCS moves forward with the proposal, a Final Finding and Decision (FFD) will be issued.

II. AUTHORITY

The proposed actions in this PD are authorized pursuant to Alaska Statute (AS) and Alaska Administrative Code (AAC), particularly *AS 29.65 General Grant Land*, *AS 38.05.035(e) Power and Duties of the Director*, *AS 38.05.125 Reservation*, *AS 38.05.127 Access to Navigable or Public Water*, *AS 19.10.010 Dedication of Land for Public Highways*, *11 AAC 51 Public Easements*, and *11 AAC 55 Land Planning and Classification*.

III. ADMINISTRATIVE RECORD

The administrative record for this PD consists of Alaska Division of Lands (ADL) case file 108579, the Central/Southern Southeast Area Plan (CSSAP) adopted November 2000, the Alaska Department of Fish and Game (ADF&G) Alaska Anadromous Waters Catalog & Atlas to the Catalog, and Alaska Department of Environmental Conservation (DEC) Contaminated Sites Database. Additional files and resources are incorporated by reference.

IV. SCOPE OF DECISION

The scope of this Preliminary Decision is limited to determining whether it is appropriate to convey the subject parcels to Petersburg Borough. This decision includes a review of third-party interests, stipulations necessary to effectuate this decision, and an evaluation of whether the public interest in retaining state ownership of the land outweighs the Borough's interest in obtaining the selected lands as provided in *AS 29.65.050 Fulfillment of Land Entitlement*. In this decision, LCS will also determine whether Petersburg Borough's municipal entitlement land selections meet requirements under *AS 29.65.070(c) Selection and Conveyance Procedure*, and whether it is appropriate to allow the Borough to exercise immediate management authority for conditional sales and leases on land approved for conveyance.

V. DESCRIPTION

A. Location and Geographical Features

Petersburg Borough was incorporated as a Non-Unified Home Rule Borough in 2013. The borough boundary encompasses the entrance to Endicott Arm, east to the Canadian border, south to Sumner Strait, west through the middle of Kupreanof Island (the eastern half of the island), and north along Stephens Passage up to Endicott Arm. The City of Petersburg is the largest population area and is located on the north end of Mitkof Island.

The area within the borough boundary is characterized by steep hillsides along the coast and fairly flat coastal plains. Spruce bog vegetation is found on coastal plains, whereas the steeper hillsides support a mixture of hemlock and spruce forest. The northern area of Mitkof Island has steep mountain terrain, while the southern part of Mitkof Island is characterized by gently sloping coastal plains backed by foothills, often rising rapidly and producing steep valleys.

Borough/Municipality: Petersburg Borough
Meridian: Copper River (C)
Regional Native Corp.: Sealaska Corporation
Tribes: Central Council of the Tlingit, Haida Indian Tribes of Alaska, and Petersburg Indian Association
USGS Map Coverage:
Sumdum Quadrangle (1:250,000)
Fanshaw Bay Sumdum A-5 (1:63,360)
Petersburg Quadrangle (1:250,000)
Thomas Bay Petersburg D-3 (1:63,360)
Frederick Point Petersburg D-3 (1:63,360)
NE Mitkof & Rock Pit Petersburg D-3 (1:63,360)
Falls Creek Petersburg C-3 (1:63,360)
Duncan Canal Petersburg C-4 (1:63,360)
Blind Slough Petersburg C-2, C-3 (1:63,360)
Woodpecker Cove Petersburg B-3, C-3 (1:63,360)

B. Legal Description, Land Status, and Third-Party Interests

TABLE 1 below identifies Petersburg Borough land selections adjudicated in this decision by location name, Township (T), Range (R), Sections (S), and includes state case file, title status, date, and any third-party interests affecting those state owned. The State holds fee title to the land and mineral estates through either Patent or Tentative Approval (TA) received from the U.S. Department of Interior, Bureau of Land Management (BLM). The State will only convey the land estate on approved conveyances to the Borough. AS 38.05.125 requires the State to retain the mineral estate.

TABLE 1

Map Name	MTRS	State Case File	Title/ Date	Third Party Interests
Fanshaw Bay	C054S075E04	NFCG 253	PA 50-89-0547 8/25/1989	None identified
Thomas Bay	C056S079E35	NFCG 124	PA 50-2004-0112 12/29/2003	ADL 108379 Land Sale Project, Auction Brochure (<i>Thomas Bay Alaska Subdivision</i>)
	C057S080E03 C057S080E04 C057S080E09	NFCG 124	PA 50-99-0205 4/16/1999	ADL 105605 Private Easement, issued (Section 4) ADL 106536 Agreement/Settlement, Approved (Sections 3, 4, and 9), Quiet Title ADL 107637 & 108804 Material Sale, Active (Section 4) ADL 108379 Land Sale, Auction Brochure (<i>Thomas Bay Alaska Subdivision</i>) (Sections 3 and 4) Forest Development Road 6256, 66' (Sections 4 and 9)
Frederick Point	C058S080E32	NFCG 112	PA 50-82-0086 7/20/1982	ADL 105927 Public & Charitable Sale, Conveyed (Sections 32 and 33) ADL 101866 Public Easement, ROW, Issued (Sections 32 and 33)
	C058S080E33	NFCG 112	PA 50-88-0039 1/15/1988	ADL 107872 Material Sales, Active (Section 32) ADL 107871 Material Sales, Active (Section 33) Frederick Drive (FDR 6204)

Map Name	MTRS	State Case File	Title/ Date	Third Party Interests
NE Mitkof & Rock Pit	C059S080E03 C059S080E09 C059S080E10 C059S080E15	NFCG 112	PA 50-88-0039 1/15/1988	ADL 101866 Public Easement, ROW, Issued (Section 10) ADL 105927 Public & Charitable Sale, Conveyed (Section 10) ADL 107870 Material Sales, Active (Section 9) ADL 108359 Land Sale Project, Auction Brochure (<i>Mitkof Island Shores</i>) (Sections 9 and 10) Climber Road (FDR 6207) (Section 9) Frederick Road (FDR 6204)
Falls Creek	C060S079E12	NFCG 295	PA 50-2007-0628 7/25/2007	Three Lakes Loop Road (FDR 6235)
Blind Slough	C061S081E26 C061S081E35 C061S081E36	NFCG 110	PA 50-2015-0074 4/14/2015	ADL 104833 Public Easement, Utility, Issued (Sections 26, 35, and 36) ADL 107218 ILMA, Issued (Sections 35 and 36), Ferry Terminal ADL 107222 Public Easement, ROW, Issued (Section 36) LAS 24878 Subsurface Water Rights, Permit Issued (Section 36) Log Transfer Facility, Tract 37 and FDR 40101 (Section 35) Mitkof Highway (Hwy 7), 132' Forest Development Road 6224, 66' (r/w AA45079) (Section 26) Forest Development Road 6222, 66' (r/w AA45079) (Section 36)
	C061S082E31	NFCG 110	PA 50-2015-0074 4/14/2015	Mitkof Highway (Hwy 7) Ernie Haugen Public Use Area (AS 41.23.050)
	C062S081E01	NFCG 110	PA 50-2015-0074 4/14/2015	ADL 103426 Public Easement, Tideland, Issued ADL 104833 Public Easement, Utility, Issued ADL 107218 ILMA, Issued, Ferry Terminal ADL 107619 Public Utility Easement, Issued Transmission Line, ROW, Power Project 3015
Woodpecker Cove	C062S080E12 C062S080E13	NFCG 290	PA 50-2003-0454 8/14/2003	Woodpecker Cove Road (FDR 6245)
	C062S081E07 C062S081E18	NFCG 290	PA 50-2003-0454 8/14/2003	Log Transfer Facility, Tract 37 Woodpecker Cove Road, FDR 6245, 66' (Section 7) Forest Development Road 6285, 66' (r/w AA74004) (Section 7) Forest Development Road 40101, 66' (Section 18)
Duncan Canal	C060S078E36	NFCG 109	PA 50-95-0596 9/26/1995	None identified

VI. PRELIMINARY DECISION

A. Background

In January 2013, Petersburg Borough was certified as an incorporated Non-Unified Home Rule Borough, which dissolved the City of Petersburg as an entity eligible to receive grant lands. Subsequently, DNR certified a Petersburg Borough entitlement of 1,896 acres of

Vacant, Unappropriated, Unreserved (VUU) land in accordance with AS 29.65.030 *Determination of Entitlement for Newly Incorporated Municipalities*. This VUU calculation included acreage from the Southeast State Forest, although per AS 41.17.500(f) *Southeast State Forest*, state forest lands may be used to calculate entitlement, but cannot be selected for municipal lands. The City of Petersburg land that was previously conveyed (458 acres) is accounted for as lands already conveyed, leaving an entitlement of 1,438 acres. However, the municipal entitlement that DNR certified in 2013 was nullified when the Alaska Legislature granted a larger entitlement to the Borough in 2017 under AS 29.65.010(a)(16) of 14,666 acres. Excluding the City of Petersburg conveyed lands, the final remaining entitlement is 14,208 acres. The Borough submitted its initial selections in March of 2016 and March of 2017, which are subject of this preliminary decision.

B. Planning, Classification and Mineral Orders

1. Planning

The land selections are separated geographically in two different management regions, Sumdum (1) and Petersburg (3). The management intent and area plan designation for each management unit is described in the CSSAP. These plan designations convert to land use classifications, which establish what land the State may convey under the Municipal Entitlement Act (*see AS 29.65.010 et seq.*). With respect to planning, the CSSAP is the controlling land management planning authority. The Borough's land selections fall within the planning boundary of the CSSAP, and accordingly, are governed by the management intent and classifications found in the plan.

Management intent has the same level of authority as a plan designation under 11 AAC 55.030(c)(6) *Land Use Plan*. In all instances, whether it is a municipal selection affected by a non-conveyable classification or a management guideline/intent that requires the State to retain land, the effect is the same: the selection is not conveyable to the Borough *unless* a plan amendment changes the classification, the management guideline/intent, or both.

2. Land Use Classification

The land selections proposed for conveyance in this decision are classified as Resource Management (RMG), Public Recreation (PUR), Settlement (STL), or Materials (MAT) which are all conveyable classifications as municipal entitlement general grant land under AS 29.65. TABLE 2 shows the land use classifications derived from the CSSAP for the land selections adjudicated in this decision.

TABLE 2.

Map Name	Copper River MTR	Section(s)	Approx. Acres	Unit	Classification	Plan Management Intent
Fanshaw Bay	T54S, R75E	04	33	S-04	RMG	Remote settlement Dispersed recreation
Thomas Bay	T56S, R79E	35	78	P-01	RMG, MAT	Multiple uses Retain certain tracts
	T57S, R80E	03, 04, 09				
Frederick Point	T58S, R80E	32, 33	134	P-07	PUR	Dispersed recreation

Map Name	Copper River MTR	Section(s)	Approx. Acres	Unit	Classification	Plan Management Intent
NE Mitkof & Rock Pit	T59S, R80E	03, 10, 15, 09	175 5	P-28	RMG	Multiple uses
Falls Creek	T60S, R79E	12	320	P-14	RMG	Multiple uses
Blind Slough	T61S, R81E	26, 35, 36	804	P-25	RMG	Multiple uses
	T61S, R82E	31				
	T62S, R81E	01				
Woodpecker Cove	T62S, R80E	13	212	P-27	RMG	Multiple uses
	T62S, R81E	07, 18				
Duncan Canal	T60S, R78E	36	145	P-30	RMG	Multiple uses

3. Mineral Orders

The mineral estate is reserved to the State pursuant to *AS 38.05.125 Reservation*.

Mineral Order (MO) 1045 closed to mineral entry parcels at Fanshaw Bay, Falls Creek, and Duncan Canal. MO 1045 was part of the 2005 University of Alaska land grant, which was subsequently invalidated by an Alaska Supreme Court decision³. On February 7, 2012, DNR issued MO 1118 which reopened some of the parcels that were closed under MO 1045. Parcels at Fanshaw Bay and Duncan Canal were reopened to mineral entry under MO 1118, and the parcel at Falls Creek remains closed to mineral entry. Thomas Bay is closed under MCO 275. Frederick Point and NE Mitkof & Rock Pit are closed to mineral entry under MCO 279. There are no other known mineral orders affecting the Borough's selections.

C. Traditional Use Finding

In an unorganized borough, disposal of state land with traditional uses is reviewed under *AS 38.05.830 Land Disposal in the Unorganized Borough*. Petersburg Borough is an organized borough under *AS 29.05.031 Incorporation of a Borough or Unified Municipality* and eligible for municipal entitlement. Therefore, a determination for traditional uses is not required. All the Borough's municipal entitlement land selections in this decision are located within its legal boundary.

D. Access

Public access will be reserved in accordance with *AS 19.10.01*, *AS 19.30.400 Identification and Acceptance to Rights-of-Way*, *AS 38.05.125*, *AS 38.05.127*, and *11 AAC 51*.

Primary travel to Mitkof Island is via airplane or boat. Frederick Sound and Sumner Straight are the major travel corridors for ferries, ships, and boats. Duncan Canal and the Wrangell Narrows are contiguous with these major water ways and provide access to some of the Borough's land selections. The City of Petersburg's airport provides for larger commercial airplanes. Floatplanes and helicopters provide access to various remote locations.

Southeast Alaska Conservation Council v. State of Alaska. 202 P.3d 1162 (Alaska 2009).

The Mitkof Highway is the primary road on Mitkof Island. There are many secondary roads, some of which were previous forestry development roads. The Blind Slough and Woodpecker Cove parcels on the south end of Mitkof Island can be accessed by Mitkof Highway (Forest Highway 7) and Woodpecker Cove Road (FDR 6245). The Falls Creek parcel is along the Three Lakes Loop Road (FDR 6235). Frederick Sound and NE Mitkof parcels, on the northeast end of the island, can be accessed by Frederick Drive (FDR 6204). Duncan Canal, Thomas Bay, and Fanshaw Bay parcels are accessed by floatplane or boat. Thomas Bay contains a small road system in its immediate area because of a developing subdivision (*Thomas Bay Alaska Subdivision*, ASLS 81-235). Forestry development roads also extend from Frederick Sound to the subdivision.

1. Section Line Easements

As required under *AS 19.10.010* and in accordance with *11 AAC 51.025*, public access easements will be reserved along each section line on lands approved for conveyance. If a section line forms a boundary of a selection being conveyed, then the easement will be 50 feet wide measured from the section line. If a section line runs through a selection being conveyed, then the easement will be 50 feet wide measured on each side of the section line, for a total width of 100 feet.

2. Trails, Rights-of-way, RS 2477, and Easements

A review of state records verifies that there are rights-of-way (ROW), easements, reservations and exceptions in the U.S. Patent affecting some of Petersburg Borough land selections as disclosed above in TABLE 1.

The Forest Development Roads (FDR), that allow access to much of Mitkof Island, are reserved to the U.S. (r/w AA45079) with a 66-foot ROW. The Mitkof Highway (FH 7) has a ROW of 132 feet. There are no RS 2477 rights-of-way within the selected lands. Tract 37, a log transfer facility (LTF) easement, containing 3.57 acres sits along Woodpecker Cove on the south end of Mitkof Island. This LTF is also reserved to the United States (PA 50-2003-0454).

3. Navigable and Public Water

The State will retain ownership of the bed of navigable water, including all gravel bars and islands, and will convey the bed of public waters to the Borough. A survey will determine the Ordinary High Water Mark (OHWM) of the navigable and public waters, the Mean High Water Mark (MHWM) on marine meandering shorelines, identify islands, and determine the specific areas to be retained by the State. At the time of survey, field work may find that a body of water or a waterway is different than identified in this decision. If this occurs, the results of the survey work will be reviewed further within DNR. If the field work is determined to be accurate, then the survey results will supersede the recommendation in this decision.

Navigable Waters: Pursuant to *11 AAC 51.035 Determination of Navigable or Public Water*, a water body is navigable if it is at least **50 acres in size** or a waterway **at least 50 feet wide from OHWM to OHWM**. A water body will also be considered navigable if it is found navigable for a useful public purpose in accordance with *AS 38.05.965 Definitions*, otherwise, it will be considered public water in accordance with *11 AAC 51.035*. Additionally,

ownership of land adjacent to navigable water does not create any right of title to land below the OHWM of the navigable water.

All tidal waters are considered navigable under the Submerged Lands Act (67 Stat 29, PL 31, 5/22/1953). The MHW is established at the time of survey.

Public Waters: Pursuant of 11 AAC 51.035, a water body is considered public water if it is **at least 10 acres but less than 50 acres in size or at least 10 feet but less than 50 feet wide from OHWM to OHWM**. Ownership of the land under or adjacent to public water does not grant an exclusive right to use of the water (AS 38.05.126 *Navigable and Public Water*).

On and along the bed of public water bodies or waterways, the State will reserve an access easement and convey title to Petersburg Borough.

4. Easements To and Along Navigable and Public Water

A public access easement on the bed and 50 feet in width upland of the OHWM will be reserved on all water bodies and waterways determined to be public, and 50 feet in width upland of the MHW of navigable waters, in accordance with AS 38.05.127 and 11 AAC 51. This easement is referred to as the 'along' easement. The 'to' easement is to be established approximately once each mile and is often provided on section line easements of 50 feet in width adjacent to the section line on each side (AS 19.10.010 and 11 AAC 51.025). The 'along' easement applies to these waterbodies and the 'to' easement is intended to provide access to the 'along' easements.

An alternative upland access route may be reserved if DNR finds that access along an easement reserved under 11 AAC 51.045(d)(1) *Easements To and Along Navigable and Public Water* is difficult because of topography or obstructions.

Navigable Waters

Navigable waters may or may not be anadromous. Exposed sand or gravel bars that are within, and are not above the OHWM, are part of the waterbody bed. Only those lands determined to be uplands that are above the OHWM are intended to be conveyed.

The navigable waters in this decision are marine and include Cleveland Passage, Thomas Bay, Frederick Sound, Blind Slough, Sumner Strait, and Duncan Canal. The upland shore will be 'subject to' a 50-foot public access easement on those lands approved for conveyance to the Borough.

Public Waters

Waterbodies determined to be public waters under 11 AAC 51.035 are identified in TABLE 3. Anadromous water catalog numbers are listed below for waterbodies that have been identified as anadromous. The beds of public waters are to be conveyed with the adjoining approved lands.

TABLE 3

Map Name	MTRS	Waterbody Name	Anadromous Water Catalog #	Public Access Easement (to & along)
Fanshaw Bay	C054S075E04	Unnamed creek	110-31-10100	On the bed and 50 feet upland
Frederick Point	C058S080E33	Unnamed creek	none	On the bed and 50 feet upland
NE Mitkof & Rock Pit	C059S080E10	Cabin Creek	108-50-10050	On the beds and 50 feet upland
		Unnamed tributary	108-50-10050-2009	
Falls Creek	C060S079E12	Falls Creek	106-44-10060	On the beds and 50 feet upland
		Unnamed tributary	106-44-10060-2003	
		Unnamed tributary	106-44-10060-2005	
		Unnamed tributaries	none	
Blind Slough	C061S081E26	Ohmer Creek	108-40-10500	On the beds and 50 feet upland
		Strange Creek	108-40-10500-2018	
		Tributary of Strange Creek	108-40-10500-2018-3007	
	C061S081E36	Unnamed creek	108-40-10550	
		Unnamed tributary	108-40-10550-2008	
		Unnamed tributary	108-40-10550-2013	
	C061S082E31	Unnamed creek	108-40-10576	
Woodpecker Cove	C062S080E12	Unnamed creeks	none	On the beds and 50 feet upland
	C062S081E07			
Duncan Canal	C060S078E36	Unnamed lake	none	On the bed and 50 feet upland
		Unnamed stream		

E. Reservation of Mineral Estate

A conveyance of VUU general grant land to a municipality under AS 29.65 conveys no interest in the mineral estate. All mineral related permits, licenses, claims, and leases affecting the land for conveyance, if any, will remain under the authority of the State.

In accordance with Section 6(i) of the Alaska Statehood Act and AS 38.05.125, the State, in this decision, reserves unto itself the mineral estate, including oil and gas, and the rights expressed in the reservation clause of the statute, that being the right to reasonable access to the surface for purposes of exploring for, developing, and producing the reserved mineral resources. Exploration and development, if any, which could occur, would be consistent with AS 38.05.130 *Damages and Posting of Bond* and other applicable statutes and regulations.

F. Hazardous Materials and Potential Contaminants

It is the responsibility of the State to protect the overall public interest if there is a reasonable expectation that hazardous contamination may exist on land being proposed for disposal. Based on review of the Alaska Department of Environmental Conservation's (DEC) list of contaminated sites and comments received, two areas have been reported. Hazard ID

#3871 is in the Woodpecker Cove selection, and Hazard ID #1762 is in the Frederick Point selection area. See the DEC comments below for details.

Petersburg Borough is expected to inspect these selections and familiarize itself with regards to the condition and quality of the land. The State of Alaska makes no representations and no warranties, expressed or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land proposed here for conveyance. The State assumes no liability for removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor any liability for the remediation of the site should such substances ever be identified. The Borough, by selecting these lands and requesting their conveyance through this PD, recognizes the surrounding areas of identified contaminated sites and will take the land "as is."

G. Survey

A State approved survey is required prior to issuance of a conveyance document. If no approved survey exists, then one must be performed by an Alaska Registered Land Surveyor under direction of the DNR DMLW Survey Section. The Borough is responsible for the expense of any survey. A survey determination may be requested by the Borough at any time subsequent to the Final Finding and Decision (FFD). There is no requirement under AS 29.65.070 to appraise the land prior to conveyance.

H. Conditional Leases and Sales

The Borough will receive management authority and equitable title to all land approved for conveyance in this decision once the FFD is effective. This will allow Petersburg Borough to approve conditional leases and make conditional sales pursuant to AS 29.65.070(b), but not to dispose of land approved for conveyance until the land has been surveyed and ownership transferred to the Borough.

I. Unauthorized Use

DNR has not physically inspected all areas of the selected lands for the presence of unauthorized use but has reviewed department records and is aware of a trespass parcel (ADL 107968) within Tract C, Section 4, Township 57 South, Range 80 East, Copper River Meridian, of the Thomas Bay Region. DNR is unaware of any other existing unauthorized use within the land selections.

The Borough is expected to inspect all its land selections to familiarize itself with the condition and quality of the land.

J. Disposition of Leases, Permits, and Applications

Administration of any active leases, permits, and easements for the surface estate issued by the State on land to be conveyed will be transferred to the Borough when the FFD becomes effective, unless such authorizations are specifically excluded from the conveyance. Any pending applications that have not been adjudicated and issued will be closed and notified.

K. Cultural Resources

The Alaska Office of History and Archaeology (OHA) maintains the Alaska Heritage Resources Survey (AHRs) which is an inventory of all reported historic, prehistoric, and archaeological sites in the State. There are known heritage sites within the Fanshaw Bay, Frederick Point, and NE Mitkof parcels. At this point in time, no historical cultural resources have been found in the other selected areas.

However, it should be noted that only a very small portion of the State has been surveyed for cultural resources and therefore, the possibility remains that previously unidentified cultural resources may be located within the selected lands. While the conveyance of these parcels will have no direct effects to cultural resources, future projects that may be proposed by Petersburg Borough on selected lands could affect unidentified cultural resources. Should any cultural resources be encountered, the Borough will need to take those actions required by law to protect such resources in accordance with AS 41.35.070(d) *Preservation of Historic, Prehistoric, and Archeological Resources Threatened by Public Construction*.

L. Form and Width Requirement

Each municipal entitlement land selection is required to be compact in form with its length not exceeding approximately four times its width pursuant to AS 29.65.070(c). Review of the Borough's land selections proposed for conveyance in this decision indicates that the selections are consistent with this statute.

M. Agency Review

The intent of an agency review is to request comments from agencies that may be affected by a municipal entitlement land conveyance decision. Agencies are given the opportunity to evaluate and comment on the municipality's land selection to determine if the State should retain all or a portion of the selected lands, and, if so, provide supporting reasons for the requested action. Additionally, agencies are requested to identify any stipulations that may be appropriate if the land is to be conveyed out of state ownership.

Agency review (AR) was conducted from February 8, 2018 through March 1, 2018 (March AR) and from October 9, 2020 through October 26, 2020 (October AR). Comments pertinent to this proposed action received during agency review have been considered and addressed below. Additional timely comments received during the Public Notice period will be considered and addressed in a subsequent Final Finding and Decision.

DNR DMLW LCS received brief comments of non-objection from the following agencies: Mental Health Trust Land Office – Southeast Area; DNR Division of Parks and Outdoor Recreation; DNR Division of Oil and Gas; and DNR DMLW Statewide Abatement of Impaired Lands.

DNR DMLW LCS Response: LCS appreciates your review of the proposal.

Comments from DNR Division of Forestry (DOF), Southeast Area, March AR
DOF reiterated that land within the SE State Forest is not available for conveyance to the Borough. The lands were determined by the legislature to be of value to the State and that they should be retained for long-term forest management (AS 41.17.120 *Inspections and Investigations*).

The Woodpecker Cove Log Transfer Facility (PTS-11.04) is considered a critical infrastructure facility for forest management of State Forest and United States Forest Service (USFS) land on Mitkof Island. The DOF strongly recommends the State retain the ownership of the uplands and tidelands associated with the log transfer facility for long term access to the State Forest. This facility enables the practical and economic movement of wood onto and off of Mitkof Island.

DNR DMLW LCS Response to DOF: LCS is aware that the SE State Forest must be retained by the State. When LCS computed the amount of acreage available (10%

of VUU lands) for Petersburg Borough to select, the acreage within the State Forest was used in this computation in accordance with AS 41.17.500(f). The Borough, on its own accord, selected lands within the State Forest, even though the forest is no longer considered VUU. LCS will not convey any SE State Forest Lands out of state ownership.

LCS understands the importance of the Log Transfer Facility (LTF) and its association with the State Forest management practices. The LTF (#265), within Tract 37, also reserved to the U.S., will not be transferred. The tidelands associated with the LTF (ATS 1541) are not included in the decision, since municipal entitlement selections apply to uplands only.

Comments from DNR Division of Forestry (DOF), Southeast Area, October AR

1. Land located in the Southeast State Forest is not available for conveyance to the Borough. These lands were determined by the legislature to be of value to the state, and are to be retained for long-term forest management (AS 41.17.210). DOF requests that these areas be removed from the selection pool. The Borough has requested transfer of portions of the State Forest in the following locations:

- a. NE Mitkof (Unit P-28) Rock Pit. While the rock pit has been a designated state material source, DOF considers the pit and its management to be integral to long term management of the surrounding State Forest. DOF does not support conveyance to the Borough.
- b. Blind Slough (Unit P-25) Section 31, Township 61 South, Range 82 East. The Borough is depicted as requesting a selection in the NE $\frac{1}{4}$; the area north of the highway is State Forest. The map also has two errors representing the State Forest:
 - i. The area in the NE $\frac{1}{4}$ south of highway is not in the State Forest.
 - ii. The SW $\frac{1}{4}$ is not in the State Forest.

2. Woodpecker Cove (P-27). The Woodpecker Cove Log Transfer Facility (PTS-11.04) is a critical infrastructure facility for forest management of State Forest and USFS land on Mitkof Island. DOF strongly recommends that the state retain ownership of the uplands and tidelands associated with the log transfer facility (LTF) for long term access to the State Forest. This facility enables the practical and economic movement of wood on and off Mitkof Island, and limited other feasible alternatives exist. Conveyance of this land out of state ownership puts future timber management on public land at risk. DOF also recommends that Lot 2 and the east half of Lot 3 adjacent to Woodpecker Cove be retained by the state to provide for:

- a. A transition zone or buffer to the log transfer site. Log transfer operations are industrial uses and prone to conflict with adjacent landowners, in particular residential owners, due to noise, hours of operation and heavy truck traffic. Development adjacent to the facility is incompatible with the current LTF, and also could create potential safety issues.
- b. Expansion or reconfiguration of the site to accommodate future multiple use management in the area.

DNR DMLW LCS Response to DOF:

1. See the above March AR response with regards to the SE State Forest.
 - a. Due to the importance of the Rock Pit to DOF as a crucial material source in the support of forest management, it will not be transferred out of state ownership. Additionally, the Rock Pit sits within the SE State Forest, which cannot be conveyed out of state ownership.

- b. The area in question on the Blind Slough Agency Review map has been correctly represented in the Preliminary Decision map as the Ernie Haugen Public Use Area. It will not be conveyed out of state ownership.
2. The uplands of the LTF associated with Woodpecker Cove (PTS-11.04) will not be conveyed per the reason given in the March AR response. Again, tidelands (ATS 1541) are not included in the decision since municipal entitlement selections apply to uplands only.
- a. Due to DOF's request for a safety transition zone for operations and industrial uses, and to reduce conflict with adjacent landowners, LCS will retain Lot 2 and the east half of Lot 3 in Section 18.
 - b. The above reason will also allow DOF to expand or reconfigure for multiple uses in the future. Lot 1 in Section 18 and the land in Lot 3 of Section 7 south of FDR 6285 will be retained in state ownership.

Comments from the Alaska Department of Environmental Conservation (DEC), March AR

DEC has listed two selected parcels that are known to contain contamination per their database.

One 'Cleanup Complete' site, Hazard ID 3871, is located within the bounds of the Woodpecker Cove parcel. The investigation and cleanup of this site met all requirements specified in 18 AAC 75 and the site was granted closure status in November 2005. At the time of closure, residual diesel range organics (DRO) contamination remained above cleanup levels in fractured bedrock on the lower bench; evacuation in this area was not practical. Any proposal to transport soil or groundwater offsite requires advance approval from the Contaminated Sites (CS) program. Additional information concerning this site can be found at the CS Database link below:

<http://dec.alaska.gov/Applications/SPAR/PublicMVC/CSP/SiteReport/3871>

One active contaminated site, Hazard ID 1762, is located within the bounds of the Frederick Point parcel (the SE¼SE¼ of Section 33, Township 58 South, Range 80 East, Copper River Meridian). Based on the current information in the DEC file, the contamination at this site is de minimis. Due to the underlying bedrock at the site, the groundwater has not been investigated. The ingestion of contaminated groundwater is considered a future risk at this site. If the property is transferred to the Petersburg Borough, they will become a responsible party; they should be made aware of this before the property transfer. Additional information concerning this site can be found at the CS Database link below:

<http://dec.alaska.gov/Applications/SPAR/PublicMVC/CSP/SiteReport/1762>

DNR DMLW LCS Response to DEC: LCS acknowledges these known contaminated sites. The Borough is expected to inspect selected lands and familiarize itself with regards to the conditions and quality of the land.

Comments from Alaska Department of Fish and Game (ADF&G), March AR:

ADF&G has the following comments on specific locations:

Frederick Point: This selection is classified for Public Recreation. It includes an area that is a common landmark used for fisheries management boundaries for the saltwater of Frederick Sound. ADF&G regulatory markers are used in this section of

the shoreline immediately adjacent to the high tide mark to be visible to boats in the marine waters.

- ADF&G recommends a stipulation such that the ADF&G regulatory markers may be established and maintained (including vegetation trimming) along the shoreline.

NE Mitkof & Rock Pit: This selection is classified Resource Management. Cabin Creek (AWC #108-50-10050), crosses through the selection. It provides important habitat for anadromous fish species such as coho and pink salmon, Dolly Varden, and cutthroat and steelhead trout.

- ADF&G recommends 50-foot wide public access easements be reserved along both sides of the creek prior to conveyance.

Falls Creek: This selection is classified Resource Management. Falls Creek (AWC# 106-44-10060) runs along the southern portion of the selection. The creek provides important habitat for anadromous fish species such as chum, coho, pink and sockeye salmon, Dolly Varden, cutthroat and steelhead trout. It is most commonly accessed from a pullout on the 3 Lakes Loop Road which is on Mental Health Trust land approximately 0.25 miles downstream from the boundary of the selected area. Anglers typically travel upstream from this access point along user paths present on both banks of Falls Creek into the selected area.

- ADF&G recommends 50-foot wide public access easement be reserved along both sides of the creek prior to conveyance.

Blind Slough: This selection is classified Resource Management. There are two streams within this selection that provide habitat for coho and/or pink salmon: AWC# 108-40-10500 and AWC# 108-40-10500-2018. There is also an old log transfer facility, known locally as "Olsen's Log Dump," where an unmaintained small boat ramp is used by anglers, hunters, trappers, and other recreational users for access to the adjacent marine waters. DOT&PF typically plows the road past this site and during portions of the fall, winter, and early spring, this is often the only boat launch available on the southern portion of Mitkof Island.

- ADF&G recommends 50-foot wide public access easements be reserved along both sides of the creeks prior to conveyance.
- We also recommend an easement or right-of-way be reserved through the selection to the log transfer site to allow continued public use.

Woodpecker Cove: This selection is classified Resource Management. It encompasses a short road leading to a parking lot and boat ramp on the east end of this selection. This ramp is used by sport fishing anglers to launch boats and access marine fisheries in the area.

- ADF&G recommends an easement to maintain access and use of the boat launch, or a stipulation that the borough maintain this as a public access boat launch facility.

ADF&G has no comments or recommendations on the Thomas Bay, Duncan Canal, or Fanshaw Bay selections.

DNR DMLW LCS Response to ADF&G: In accordance with AS 38.05.127, a 50-foot public access easement will be imposed along the shores of all navigable and public

waters and anadromous streams. Per AS 29.65.130(6) *Definitions*, conveyance of state land to municipalities are made "without reservation or condition except as may be required by law." Reservations required by law include section line easements and 'to and along' easements.

Frederick Point: The regulatory markers would be situated within the public access easement, and therefore still provide a visual object for boaters in Frederick Sound to delineate fisheries management boundaries.

Falls Creek: Due to receiving further comments from ADF&G during the October AR, please refer to LCS's response from the October AR.

Blind Slough: The access road leading up to the South Mitkof Ferry Terminal (ILMA ADL 107218) has a public easement (ADL 107222) and will be reserved to the State. Tract A and B of ASLS 2004-52 will not be conveyed out of state ownership, because it has been determined it is in the best interest of the State to retain ownership of this land. Access to the old log transfer station (ADL 107729, ATS 132, PTS 11.03) is public access issued to USFS. This access is located in Tract 37; therefore, the State will retain ownership of Tract 37 to allow continued public access for recreational use of the boat ramp.

Woodpecker Cove: The short access road leading off Woodpecker Cove Road to the log transfer facility in Tract 37 is part of the Forest Development Roads (FDR 40101) which are reserved to the United States with a 66-foot wide easement. Tract 37 is also reserved to the US for the Log Transfer Facility. The State will not convey Tract 37 nor the FDR and they will continue as public access to the boat ramp at the LTS.

Comments from Alaska Department of Fish and Game (ADF&G), October AR:

The Alaska Department of Fish and Game (ADF&G) has reviewed the municipal entitlement land selection preferences submitted to the Department of Natural Resources by the Petersburg Borough pursuant to AS 29.65.010. The lands selected are on state lands managed by guidelines and policies established by the Central Southern Southeast Area Plan (CSSEAP, adopted 2000). The lands selected consist of approximately 1,893 acres. All lands have classifications that are deemed conveyable to the Borough.

These lands provide habitat for numerous terrestrial, freshwater, and marine fish and wildlife. Many of the uplands provide habitat for Sitka black-tailed deer, moose, black and brown bears. Freshwater streams provide rearing and spawning habitat for anadromous and resident fishes. Adjacent coastal waters and estuaries are important for migratory birds, marine mammals, fish, and shellfish. Additionally, public access for harvest of fish and wildlife resources is common in these selections, especially in coastal areas.

Generally, ADF&G recommends the retention of state lands associated with all anadromous and high-value resident fish waterbodies. Public access easements to and along all public waterbodies, including coastlines, should be reserved pursuant to AS 38.05.127.

Additionally, public access easements should be reserved for any existing trails and

section lines, which may be important for public access for fishing and hunting on adjacent public uplands, including within the Tongass National Forest. Specific recommendations for each unit are below.

Thomas Bay, Unit P-01: This 78-acre selection is located approximately 10 miles northeast of the City of Petersburg across Frederick Sound within Section 35, Township 56 South, Range 79 East and Sections 3, 4 and 9, Township 57 South, Range 80 East, Copper River Meridian.

- The proposed selections include parcels adjacent to the coast of Thomas Bay that are subject to 50' wide public access easement upland of OHW pursuant to AS 38.05.127.

Frederick Point, Unit P-07: This 134-acre selection is located within Sections 32 and 33, Township 58 South, Range 80 East, Copper River Meridian.

- The proposed selections include parcels adjacent to the coast of Frederick that are subject to 50' wide public access easement upland of OHW pursuant to AS 38.05.127.

NE Mitkof and Rock Pit, Unit P-28: These 175 and 5-acre selections are located within Sections 3, 9, 10 and 15, Township 59 South, Range 80 East, Copper River Meridian.

- The proposed selections include parcels adjacent to the coast of Frederick that are subject to 50' wide public access easement upland of OHW pursuant to AS 38.05.127.
- Two cataloged anadromous water bodies flow through the selection. Cabin Creek (AWC# 108-50-10050) and an unnamed tributary (AWC# 108-50-10050-2009) provide habitat for coho and pink salmon, cutthroat trout, Dolly Varden and Steelhead trout. These waterbodies are subject to 50' wide public access easement upland of OHW pursuant to AS 38.05.127.

Falls Creek, Unit P-14: This 320-acre selection is located withing Section 12, Township 60 South, Range 79 East, Copper River Meridian. Falls Creek and two unnamed tributaries flow through the southern portion of this selection. Falls Creek has been identified in ADF&G's Anadromous Waters Catalog (AWC# 106-44-10060) as providing habitat for chum, coho, pink and sockeye salmon, cutthroat trout, Dolly Varden and Steelhead trout. The unnamed tributaries (AWC#'s 106-44-10060-2003 and 106-44-10060-2005) provide habitat for coho salmon.

According to the management intent outlined in the CSSEAP, owing to its productivity and high public use, Falls Creek is subject to a 500-foot buffer of undisturbed land to be retained by the state. The CSSEAP states that salmon and Steelhead trout rearing habitat should be protected in adjacent tributaries and beaver ponds. In addition to the above-mentioned cataloged waterbodies, the proposed selection contains at least two other tributaries that ADF&G Habitat Section predict are occupied by both anadromous and resident fishes.

- ADF&G concurs with the recommendation within the CSSEAP for the retention of state land within 500 feet upland of ordinary high water of Falls Creek.
- Falls Creek and its cataloged and non-cataloged tributaries are subject to 50' wide public access easement upland of OHW pursuant to AS 38.05.127.
- Additionally, ADF&G recommends the retention of state land upland of the

ordinary high water mark as well as the beds of the unnamed tributaries to Falls Creek that are predicted to provide habitat for anadromous and resident fish species. Chapter 2: Shorelines, Streams Corridors and Coastal Areas of the CSSEAP, recommends buffers of state land to be between 100 and 300 feet along high value anadromous and resident fish streams.

Blind Slough, Unit P-25: This 804-acre selection is located within Sections 26, 35, 36, Township 61 South, Range 81 East; Section 31, Township 61 South, Range 82 East; and Section 1, Township 62 South, Range 81 East, Copper River Meridian. The proposed selections contain several waterbodies cataloged within ADF&G's AWC. The unnamed stream (AWC# 108-40- 10576) provides rearing habitat for coho salmon. The unnamed stream (AWC# 108-40-10550) provides habitat for coho and pink salmon and an unnamed tributary (AWC# 108-40-10550- 2008) provides rearing habitat for coho salmon. Strange Creek (AWC# 108-40-10500-2018) and an unnamed tributary (AWC 108-40-10500-2018-3007) provide rearing habitat for coho salmon. A portion of this selection is adjacent to Ohmer Creek (AWC 108-40-10500), which provides habitat for chum, coho, chinook, pink, sockeye salmon, Dolly Varden, and Steelhead trout. In addition to the above-mentioned cataloged waterbodies, the proposed selection contains at a waterbody that ADF&G Habitat Section predict is occupied by anadromous fishes. The waterbody in question is located west of the Mitkof Highway in the SW $\frac{1}{4}$ of Section 26 and flows southward into estuarine wetlands of Blind Slough.

- The proposed selections include parcels adjacent to the coast of Blind Slough and Ohmer Creek that are subject to 50' wide public access easement upland of OHW pursuant to AS 38.05.127.
- The above-mentioned cataloged and non-cataloged waterbodies are subject to 50' wide public access easement upland of OHW pursuant to AS 38.05.127.

Woodpecker Cove, Unit P-27: This 212-acre selection is located within Section 13, Township 62 South, Range 80 East and Sections 7 and 18, Township 62 South, Range 81 South, Copper River Meridian. Several streams flow into Sumner Strait through the selection. While the streams are not cataloged, ADF&G Habitat Section predict they are occupied by anadromous fishes or resident fishes.

- The above-mentioned non-cataloged waterbodies are subject to 50' wide public access easement upland of OHW pursuant to AS 38.05.127.
- The proposed selections include parcels adjacent to the coast of Sumner Strait that are subject to 50' wide public access easement upland of OHW pursuant to AS 38.05.127.

Duncan Canal, Unit P-31: This 145-acre selection is located within Section 36, Township 60 South, Range 78 East, Copper River Meridian. This selection contains a stream, associated with a wetland that flows into Duncan Canal that ADF&G Habitat Section predicts is occupied by anadromous fishes.

- The above-mentioned non-cataloged waterbodies are subject to 50' wide public access easement upland of OHW pursuant to AS 38.05.127.
- The proposed selections include parcels adjacent to the coast of Duncan Canal that are subject to 50' wide public access easement upland of OHW pursuant to AS 38.05.127.

Fanshaw Bay, Unit S-04: This 33-acre selection is located within Section 4, Township 54 South, Range 75 East, Copper River Meridian. The selection is in proximity to an

unnamed stream (AWC# 110-31-10100) that provides habitat for coho, pink, and Dolly Varden.

- Aerial imager indicates that the proposed selection is more than 50' from the OHW mark of the above-mentioned stream.
- The proposed selections include parcels adjacent to the coast of Cleveland Passage that are subject to 50' wide public access easement upland of OHW pursuant to AS 38.05.127.

DNR DMLW LCS Response to ADF&G: See LCS's above response to ADF&G's March AR comment with regards to the public access along the stream shores. TABLE 3 above lists the public waters, including those anadromous, that will have the public access easement imposed on the beds and 50 feet upland along the shore. All marine shores will have a public access easement per AS 38.05.127.

The CSSAP states within the management intent for Unit P-14 that an undisturbed vegetative buffer of 500 feet on each side of Falls Creek will be retained in state ownership. However, LCS will postpone adjudication of the land south of the minor trail that transects Section 12, Township 60 South, Range 79 East, Copper River Meridian. This should give ADF&G additional time to research the importance of the tributaries that flow into Falls Creek to aid in LCS's decision process on the buffers necessary to protect the stream. The land north of the minor trail will not be retained in state ownership.

Comments from Department of Transportation & Public Facilities (DOT&PF), March AR:
DOT&PF has found one of the parcels in the review, Blind Slough, includes DOT&PF facilities that must be retained. The Right-of-Way for the Mitkof Highway, the South Mitkof Ferry Terminal, and its access road are necessary for our continued maintenance and operation of those facilities as required under 23 U.S.C.

DNR DMLW LCS Response to DOT&PF: The access road, which has a public easement (ADL 107222) leading up to the South Mitkof Ferry Terminal (ILMA ADL 107218), will be held in state ownership. The State understands the need for continued and consistent maintenance of the highway right-of-way (ROW); therefore, the Mitkof Highway ROW is subject to the State. Tracts A and B of ASLS 2004-52 (the South Mitkof Ferry Terminal) will not be conveyed out of state ownership, because it has been determined the State has an interest in retaining the maintenance and access of this land for the operation of the ferry terminal.

Comments from Department of Transportation & Public Facilities (DOT&PF), October AR:

In regards to the land selection *Blind Slough*, and in order to properly steward retained State Right of Way surrounding the South Mitkof Ferry Terminal as well as the Mitkof Highway:

- In accordance with State laws (and Federal regulations where applicable) the State shall retain existing transportation interests as well as unit P-25 "Blind Slough". There are transportation projects planned (though currently suspended) for the Blind Slough area. As for the other units, DOT&PF may not yet have identified current plans for transportation projects within those units though caution must be exercised when considering releasing land holdings that have roads or shoreline nearby or within the area. Expansions and future roads and/or terminals may be needed.

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- Any future access road or driveway onto Mitkof Highway would need to be permitted through Southcoast Region Right-of-Way Group.
- The SE Mitkof Hwy Right of Way is typically 66 feet from center line with 134 feet setbacks but the road is allowed to meander through the Right of Way. Due diligence must be made prior to any development near the highway Right of Way.
- Parking cars in the clear zone (fog line and beyond ~15 feet) is not permitted.

Please coordinate with DOT&PF Southcoast Region in Juneau on this project.

DNR DMLW LCS Response to DOT&PF: As mentioned in the LCS March response, the State will retain ownership of the Mitkof Highway right-of-way and the access road (ADL 107222) and easements (ILMA, ADL 107218, Tracts A and B) surrounding the South Mitkof Ferry Terminal. The Borough will be advised to coordinate with DOT&PF Southcoast Region prior to any future plans in this area.

Comments from Department of Commerce Community & Economic Development (DCCED), March AR:

DCCED is in support of the land conveyance because it can help Petersburg's economic self-sufficiency.

DNR DMLW LCS Response to DCCED: LCS appreciates your review of the proposal and statement of support for conveying land to the Petersburg Borough.

Comments from DNR DMLW, Land Conveyance Section-Competitive Sales Unit (LCS), October AR:

The competitive sales unit has reviewed the Petersburg municipal land selection (108579) and has the following comments:

Thomas Bay – The lands within the Thomas Bay area are part of a proposed land sale area, Thomas Bay Alaska Subdivision (ADL 108379). These lands are very valuable in that the land is both waterfront, and is already subdivided via the Thomas Bay Alaska Subdivision (ASLS 81-235). However, although we would generally prefer to retain surveyed lands suitable for disposal, it is unlikely that LCS would be able to sell these parcels in foreseeable future. The Central/Southern Southeast Area Plan (CSSEAP) management intent for unit P-01 states that "Land disposals are not considered consistent with the recreational uses of this parcel." The proposed subdivision offering was put on hold in 2015 due to opposition regarding recreational use of the area (largely hunting). Due to the habitat and recreation concerns, and the high degree of uncertainty regarding our ability to sell parcels within the Thomas Bay Alaska Subdivision, the competitive land sales team has no objection to the conveyance of these parcels to the Petersburg Borough.

Mitkof Island – The selected lands are within the Mitkof Island Shores Subdivision project area (ADL 108359). These lands are of particularly high value, being that land is road accessible and waterfrontage. The land is within unit P-28 of the CSSEAP. Management intent for this unit that "land disposals are not planned during the planning period but should be reevaluated at the time of plan update. Several areas along the coast may be appropriate for subdivisions." The CSSEAP was adopted in November 2000, and it is at the end of the 20-year "planning period." The competitive land sales team intends to reevaluate this management intent and pursue the proposed Mitkof Island Shores Subdivision. We request that DNR retain in State ownership those portions of within

Government 1 of Section 3, and Government Lots 1 and 2 of Section 10, Township 59 South, Range 80 East, Copper River Meridian.

DNR DMLW LCS Response to LCS-Competitive Sales Unit (Unit): LCS understands the importance to develop subdivisions and sell land for the benefit of the Borough and State. LCS acknowledges the relinquished interest in the *Thomas Bay Alaska Subdivision*. Even though the Unit would prefer the State retain acreage in the Mitkof Island Shores Subdivision, LCS feels the need to ensure the Borough reaches its goal of entitlement and balance the interests between the Borough and the State. The selected lots will be conveyed to the Borough.

The following agencies or groups were included in the agency review, but no comment was received:

- Department of Natural Resources
 - Division of Geological and Geophysical Surveys
 - Division of Mining, Land and Water
 - Public Access Assertion and Defense
 - Resource Assessment & Development Section
 - Mining Section – Southeast Region
 - Southeast Regional Office
 - Division of Oil and Gas

VII. SUBMITTAL OF PUBLIC COMMENTS

See *Attachment J: Public Notice for specific date and conditions*

Pursuant to AS 38.05.945 Notice, LCS is issuing public notice for comment on this Preliminary Decision.

In accordance with AS 38.05.946(a) *Hearings*, a municipality or corporation entitled to receive notice under AS 38.05.945(c) may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the Commissioner (or representative) shall attend the hearing. The Commissioner has discretion whether or not to hold a public hearing.

LCS will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the PD, additional public notice for the affected lands will be given. Reducing the amount of land offered and making minor changes to any of the proposals will not be considered significant changes requiring additional public notice.

If the proposal is approved and no significant change is required, the Preliminary Decision, including any deletions, minor changes, and summary of comments and LCS responses will be issued as a subsequent Final Finding and Decision without further notice.

Only persons from whom LCS receives timely, written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision. Upon approval and issuance of a Final Finding and Decision, a copy of the decision will be made available online at <http://landsales.alaska.gov/> and sent with an explanation of the appeal process to any party who provides timely written comment.

DNR is prepared to accommodate individuals with disabilities by providing auxiliary aids, services, or special modifications in order to participate in this review. Individuals who may need such assistance should contact DNR's Public Information Center. For more information refer to the attached Public Notice.

**DEADLINE TO SUBMIT WRITTEN COMMENT IS
4:30 PM, FRIDAY, MARCH 12, 2021**

VIII. DISCUSSION AND ALTERNATIVES

A. Discussion

This Preliminary Decision for the Petersburg Borough municipal entitlement land selections covers approximately 1,813 acres of state land. LCS proposes to approve for conveyance and transfer equitable title and management authority on approximately 1,452 acres of state land, identified in TABLE 4 below. Adjudication of approximately 218 acres will be postponed in this PD, and are listed in TABLE 5, and the reason listed below. This decision also proposes to reject approximately 143 acres of municipal selections. These lands will be retained in state ownership for reasons outlined below and are identified in TABLE 6.

Certain borough selected lands are proposed to be rejected in this decision for the following reasons:

- Lands were selected within the Southeast State Forest in two locations, the Rock Pit located at NE Mitkof Island, and along the Mitkof Highway at Blind Slough. Land within the Ernie Haugen Special Use Area along Mitkof Highway was also selected. Southeast State Forest and Ernie Haugen Special Use Area are Legislatively Designated Areas, which cannot be conveyed out of state ownership.
- In agency comments, DOT&PF identified certain areas the State must retain for continued maintenance and operations as required under 23 USC, namely Mitkof Highway ROW, the South Mitkof Ferry Terminal and its access road (ADL 107222).
- ADF&G recommends the State retain access to the old log transfer facility at Blind Slough (Tract 37), known locally as "Olsen's Log Dump" for continued public access and recreational use.
- DOF recommends the State retain the log transfer facility at Woodpecker Cove (Tract 37) and various lots that border the cove to enable continued practical and economic movement of forest products onto and off Mitkof Island.
- The Borough selected Tract C of ASLS 81-235, *Thomas Bay Alaska Subdivision*, which is identified in the CSSAP to be retained in state ownership.

Certain borough selected lands are proposed to be postponed from adjudication in this decision for the following reason:

- In agency comments, ADF&G recommended retaining certain borough selected lands based on the CSSAP stating that the State retain a 500-foot buffer on either side of Falls Creek, which is important habitat for anadromous fish species, as noted in ADF&G agency comments. ADF&G has reason to believe the tributaries are very important to the health of the creek drainage and may be anadromous as well, but would need time to do further research. The 500' buffer would protect a small portion of those tributaries. Rather than reject the recommended 1000' buffer along Falls Creek, LCS proposes to postpone the adjudication of the land south of the minor trail/road that bisects Section 12 and allow ADF&G to collect more data which would assist in our decision process.

This decision determines that the majority of the municipal selections adjudicated in this decision for which the State currently has title are appropriate for conveyance to the Borough. These lands fall within a conveyable classification and there is no indication that

the State's interest in retaining these land selections outweighs the interest of Petersburg Borough in obtaining them.

Management authority on lands approved for conveyance will be transferred to the Borough once the FFD becomes effective.

This decision further determines that, for those lands to be conveyed to Petersburg Borough, certain conditions and restrictions are appropriate and necessary to ensure the protection of important resources and public access. This decision, therefore, imposes restrictions and reservations that are to be part of the conveyance document, to ensure adherence to state statutes and administrative code. Restrictions and reservations are listed in **Section IX. Recommendation**.

B. Alternatives

The following alternatives exist:

1. Take no action to approve or reject Petersburg Borough land selections. This alternative would, in effect, preclude the Borough's ownership of lands considered to be important to their land base. This action would be inconsistent with the purpose of the Municipal Entitlement Act and inconsistent with the basis for the disapproval of a municipal entitlement selection. Such selections can only be rejected when a state's interests outweigh the interest of the borough, and there is no basis for such a determination.
2. Reject the Borough's selections in their entirety. This alternative would have the same effect as Alternative #1 and would, similarly, be inconsistent with the statutory basis for rejection of a municipal selection.
3. Approve in part with management authority transferred, postpone in part, and reject in part retaining state ownership. This alternative is effective in meeting the intent of the Municipal Entitlement Act to convey appropriately classified state general grant land to Petersburg Borough.

IX. RECOMMENDATION AND PRELIMINARY DECISION

A. Recommended Alternative

This decision determines that Alternative 3 is the preferred action and best fits the intent of the Municipal Entitlement Act. The Petersburg Borough land selections in part, are approved for conveyance, subject to the conditions, restrictions and reservations listed below.

B. Recommended Conditions, Restrictions, and Reservations **Conditions**

1. As provided by 11 AAC 51.035, the State will retain in state ownership to the bed of all navigable waters, including any waters determined to be navigable in fact, from the outermost OHWM, including all gravel bars and islands.
2. As required under AS 38.05.127 and 11 AAC 51, the location of the MHW and OHWM of navigable waters, including any waters determined to be navigable in fact, will be determined at the time of survey to determine the specific area to be retained by the State.
3. As required under AS 38.05.127 and 11 AAC 51, the location of the OHWM of public waters will be determined at the time of survey.

4. Management authority will transfer to Petersburg Borough on those lands approved for conveyance once the FFD becomes effective.
5. Management authority for public access easements is transferred to the Borough once the FFD becomes effective. No such easements may be vacated, abandoned or otherwise extinguished or rendered incapable of reasonable use by the public without approval of the State of Alaska, unless an alternative means for reasonable public access is provided and approved by the State.
6. Administration of state leases and permits pertinent to the surface estate will be transferred to Petersburg Borough once the FFD becomes effective. Administration of issued state leases and permits, in the mineral estate will remain with the State.
7. Once the FFD is effective, Petersburg Borough may execute conditional leases and make conditional sales on lands approved for conveyance, prior to issuance of a state patent in accordance with AS 29.65.070(b).
8. The net chargeable acreage approved for conveyance shall be credited towards partial fulfillment of Petersburg Borough municipal land entitlement pursuant to AS 29.65.010.
9. Notification to the Alaska State Historic Preservation Office in accordance with AS 41.35.070(d) is required upon discovery of historic, prehistoric, or archaeological sites, locations, remains or objects.

Restrictions and Reservations

Conveyance document will be issued subject to the following restrictions and reservations:

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 a 50-foot wide easement on each side of all surveyed and unsurveyed section lines in accordance with AS 19.10.010 and 11 AAC 51.025.
3. Reservation of a continuous public access easement, 50 feet wide, upland of and adjacent to the MHW of marine waters pursuant to AS 38.05.127 and 11 AAC 51.
4. Reservation of a continuous public access easement, 50 feet wide, upland of and adjacent to the OHWM of all navigable, waters determined to be navigable in fact, and on the bed and 50 feet upland along public waters pursuant to AS 38.05.127 and 11 AAC 51.
5. Reservation of the mineral estate pursuant to Section 6(i) of the Alaska Statehood Act and AS 38.05.125; and reservation of reasonably necessary access to the mineral estate in accordance with AS 38.05.130.
6. Reservation of Forestry Development Roads (6204, 6207, 6224, 6222, 6245, 6253, 6285, 40101) 66 feet wide.
7. Reservation of Tract 37 (3.57 acres) within T62S, R81E, CRM and Tract 37 (2.96 acres) within Section 35, T61S, R81E, CRM
8. Reservation of Mitkof Highway (Hwy 7) right-of-way, 132 feet wide.
9. Reservation of a transmission line right-of-way (Tyee Lake Hydroelectric Project Transmission Line) for Power Project 3015.

C. Recommended Action on Municipal Selections

This decision recommends conveyance of certain state owned vacant, unappropriated, unreserved general grant land to Petersburg Borough and rejects a portion of the lands selected, all located in the Copper River Meridian of Southeast Alaska.

Lands Proposed for Conveyance

TABLE 4 lists those lands proposed to be approved for conveyance in this decision. The estimated acreages for conveyance do not account for any exclusions, and exact acreages are determined by survey. The final acreage amount will be credited towards partial fulfillment of Petersburg Borough municipal land entitlement.

TABLE 4

Map Name	Copper River MTR	Section and Legal Description	Acres
Fanshaw Bay	T54S, R75E	Sec. 04: Lots A – C USS 2590 (8.82 ac.) Lots D – M USS 2591 (19.33 ac.) Lots N and O USS 2592 (5.2 ac.)	33.35
Thomas Bay	T56S, R79E	Sec. 35: Lots 1 – 5 Block 1 ASLS 81-235 (11.64 ac.) Lots 1 and 2 (3.168 ac.), portion Lot 3 (1.521 ac.), portion Lot 4 (0.162 ac.) Block 2 ASLS 81-235	16.49
	T57S, R80E	Sec. 03: Lot 13 (2.856 ac.), portion Lot 11 (0.506 ac.), portion Lot 12 (2.799 ac.) Block 2 ASLS 81-235 Sec. 04: Lots 5 – 10 (12.501 ac.), portion Lot 3 (0.086 ac.), portion Lot 4 (1.445 ac.), portion Lot 11 (2.112 ac.), portion Lot 12 (0.036 ac.), Block 2 ASLS 81-235	22.34
Frederick Point	T58S, R80E	Sec. 32: Lots 1 – 4 (116.88 ac.) Sec. 33: Lot 1 (17.32 ac.)	134.2
NE Mitkof & Rock Pit	T59S, R80E	Sec. 03: Lot 1 (11.61 ac.) Sec. 10: Lots 1 and 2 (71.24 ac.), Lots 3 and 4 (73.61 ac.) Sec. 15: Lot 1 (18.19 ac.)	174.65
Falls Creek	T60S, R79E	Sec. 12: Land north of the minor trail/road in the S1/2 N1/2	100.78
Blind Slough	T61S, R81E	Sec. 26: Lots 1 – 6 (162.28 ac.), NE1/4 SW1/4 (40 ac) <i>excluding Mitkof Hwy ROW</i> Sec. 35: Lots 1 – 5 (107.77 ac.) <i>excluding Mitkof Hwy ROW</i> Sec. 36: Lot 1 (17.85 ac.) <i>excluding Tract A ASLS 2004-52, SE1/4 (160 ac.), N1/2 SW1/4 (80 ac.), SE1/4 SW1/4 (38.87 ac.) excluding Tract A ASLS 2004-52, excluding Mitkof Hwy ROW and public access easement (ADL 107222)</i>	606.77
	T62S, R81E	Sec. 01: Lots 1 and 2 (55.54 ac.), Lot 3 (31.84 ac.) <i>excluding Tract B ASLS 2004-52, Lot 4 (0.18 ac.) excluding Tract B ASLS 2004-52, Lots 5 and 6 (3.16 ac.)</i>	90.72
Woodpecker Cove	T62S, R80E	Sec. 12: Portion of Lot 1 south of Woodpecker Cove Road (5.35 ac.) Sec. 13: Lot 2 (1.86 ac.), portion Lot 1 south of Woodpecker Cove Road (17.47 ac.)	24.68
	T62S, R81E	Sec. 07: Those portions of Lots 1 and 2 south of Woodpecker Cove Road (37.19 ac.), south of Woodpecker Cove Rd within SW1/4 SE1/4 (21.91 ac.), portion of Lot 3 south of Woodpecker Cove Road and north of FDR 6285 (8.79 ac.) Sec. 18: West half of Lot 3 (10.07 ac.), Lot 4 (15.22 ac.)	67.89
			25.29
Duncan Canal	T60S, R78E	Sec 36: Lots 1 – 3 (64.7 ac.), SE1/4NE1/4, NE1/4SE1/4 (80 ac.)	144.7
APPROXIMATE TOTAL PROPOSED APPROVED ACRES:			1451.86

Lands Proposed for Postponement

TABLE 5 lists those lands proposed for postponement in this decision. The estimated acreages for conveyance do not account for any exclusions, and exact acreages are determined by survey. These lands will be reassessed for adjudication in the future.

TABLE 5

Map Name	Copper River MTR	Section and Legal Description	Acres
Falls Creek	T60S, R79E	Sec 12: All land south of the minor trail/road in the N1/2 S1/2	218.31
APPROXIMATE TOTAL PROPOSED POSTPONED ACRES:			218.13

Lands Proposed for Rejection

TABLE 6 lists those lands that were selected by Petersburg Borough that are proposed for rejection in this decision. These include lands to be retained by the State because the interest of the State outweighs that of the Borough or the CSSAP states the land will be retained by the State.

TABLE 6

Map Name	Copper River MTR	Section and Legal Description	Acres
Thomas Bay	T57S, R80E	Sec. 04: Portion Tract C, ASLS 81-235 (25.345 ac.) Sec. 09: Portion Tract C, ASLS 81-235 (1.852 ac.)	27.197
NE Mitkof & Rock Pit	T59S, R80E	Sec. 09: Portion within Material Site in SW1/4SW1/4NE1/4	3.54
Woodpecker Cove	T62S, R81S	Sec. 07: Portion Tract 37 (1.36 ac.), Lot 3 south of FDR 6285 (4.1 ac) Sec. 18: Portion Tract 37 (2.21 ac.), Lot 1 (.17 ac), Lot 2 (.79 ac), E1/2 Lot 3 (10.07 ac)	18.7
Blind Slough	T61S, R81E	Sec. 35: Tract 37 (2.96 ac.) Sec. 36: Tract A ASLS 2004-52 (10.17 ac.), Public Access Easement ADL 107222 (6 ac.)	19.13
	T61S, R82E	Sec. 31: From 300 ft upland of the Mitkof Hwy (31 ac), Lot 1 (15.16 ac.), portion Lot 4 south of Mitkof Hwy (23.81 ac.), portion of NWNE south of Mitkof Hwy (3.29 ac.), Lot 5 (1.08 ac.)	74.34
	T62S, R81E	Sec. 01: Tract B, ASLS 2004-52 (0.44 ac.)	0.44
APPROXIMATE TOTAL PROPOSED REJECTED ACRES:			143.347

D. Preliminary Decision

The following are the findings for this Preliminary Decision:

1. That it is appropriate to convey approximately 1,451.86 acres of state-owned land to Petersburg Borough. This decision determines that the State's interest to retain this land does not outweigh the Borough's interest to obtain it.
2. That it is appropriate to postpone adjudication of 218.13 acres of state-owned land so that ADF&G may gather more data on the Falls Creek tributary and drainage system.
3. That it is appropriate to reject 69.007 acres of borough land selections where the interest of the State in retaining the land outweighs the interest of the Borough in obtaining it.
4. That it is appropriate to reject 77.34 acres of borough land selections because they are within Legislatively Designated Areas (Southeast State Forest and Ernie Haugen Public Use Area), and thus are ineligible for conveyance.

This Preliminary Decision, described above, represents the preferred alternative that has been reviewed and considered. After review and consideration of materials in this PD, LCS finds that the recommended action may be in the best interest of the State and that it is hereby approved to proceed to Public Notice in accordance with AS 38.05.945.

After public notice, the subsequent review process may result in changes to the preferred alternative(s) or disapproval of the proposed action altogether. A Final Finding and Decision will address any significant issues or concerns raised during the public review process.



Prepared by: Mary Hermon
Natural Resource Specialist II
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

2/9/2021
Date

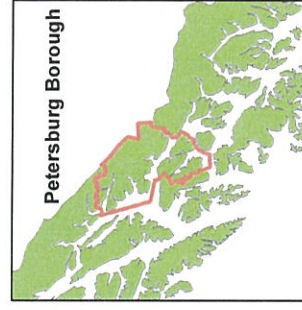
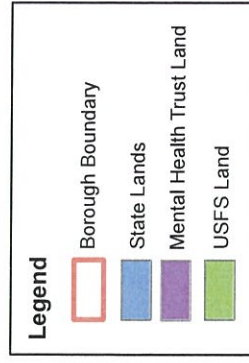


Approved by: Rachel Longacre
Section Chief
Land Conveyance Section
Division of Land, Mining and Water
Department of Natural Resources
State of Alaska

02.09.2021
Date

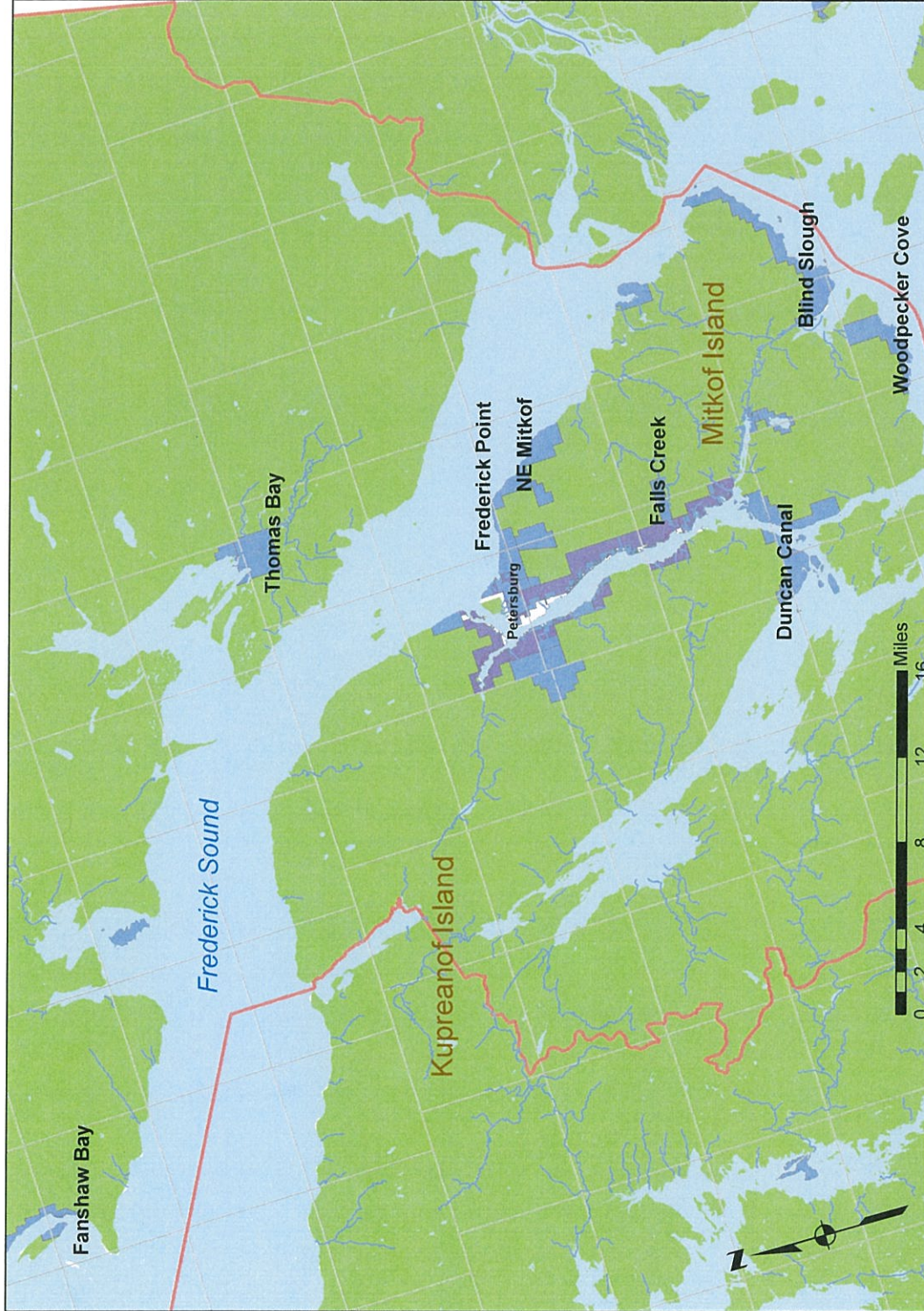
Petersburg Borough Municipal Selections Vicinity Map

ADL 108579



Created By: SOA-DNR-DMLW-LCS

February 2021



This map is for graphic representation only. It is intended to be used as a guide only and may not show the exact location of existing surveyed parcels or show all easements and reservations. Source documents remain the official record.



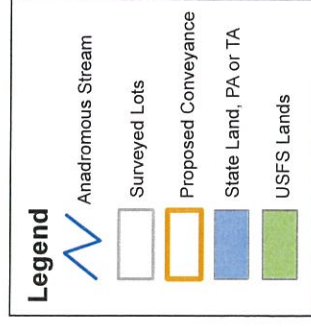
ATTACHMENT B

Petersburg Borough
Municipal Selections

ADL 108579

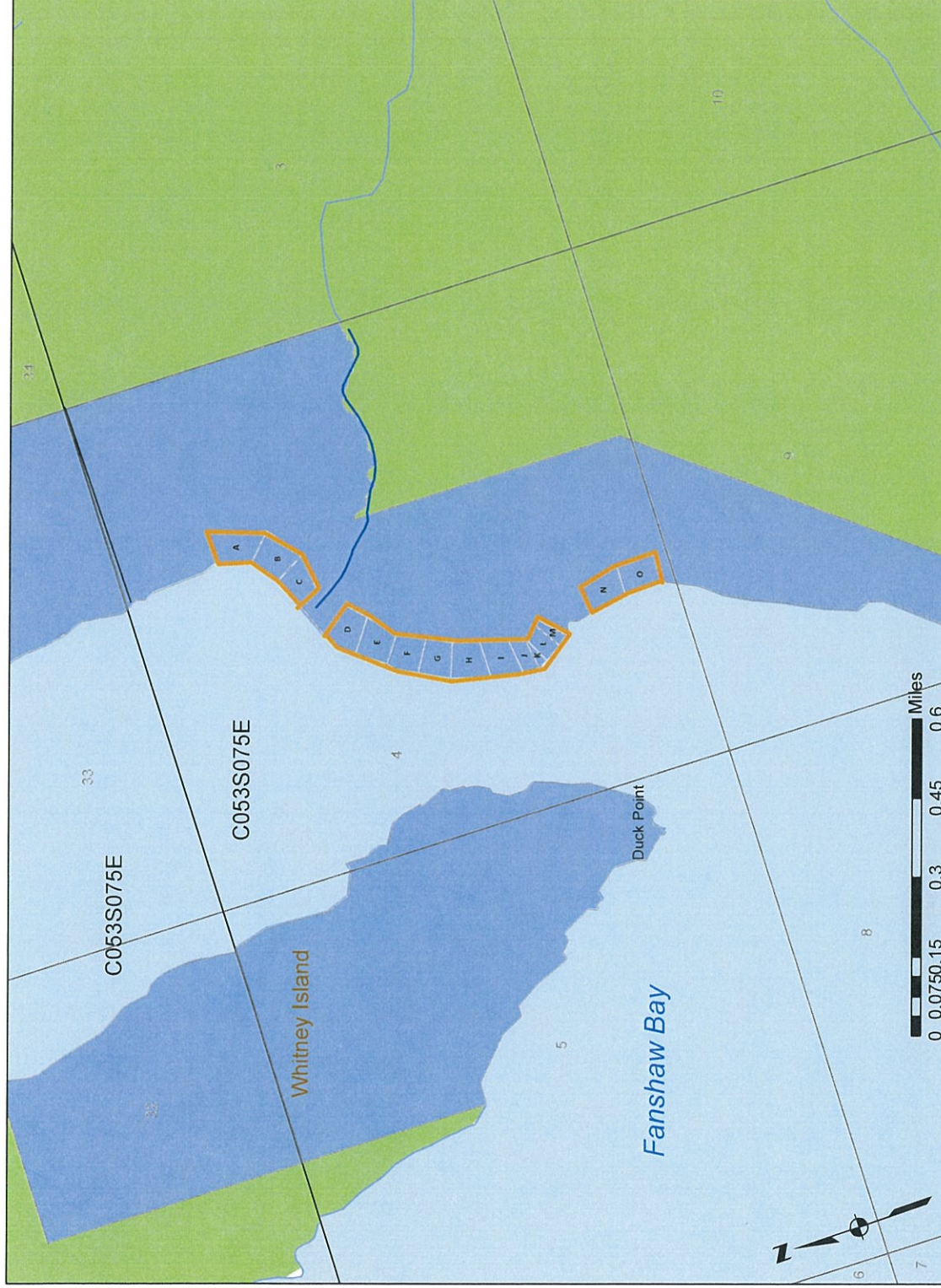
Preliminary Decision

Fanshaw Bay



Created by: SOA-DNR-DMLW-LCS

February 2021



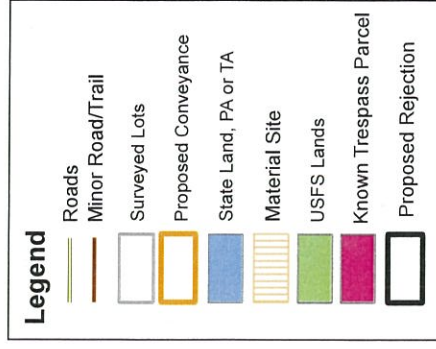
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ATTACHMENT C

Petersburg Borough
Municipal Selections
ADL 108579
Preliminary Decision

Thomas Bay



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ATTACHMENT D

Petersburg Borough








Municipal Selections

ADL 108579

Preliminary Decision

Frederick Point

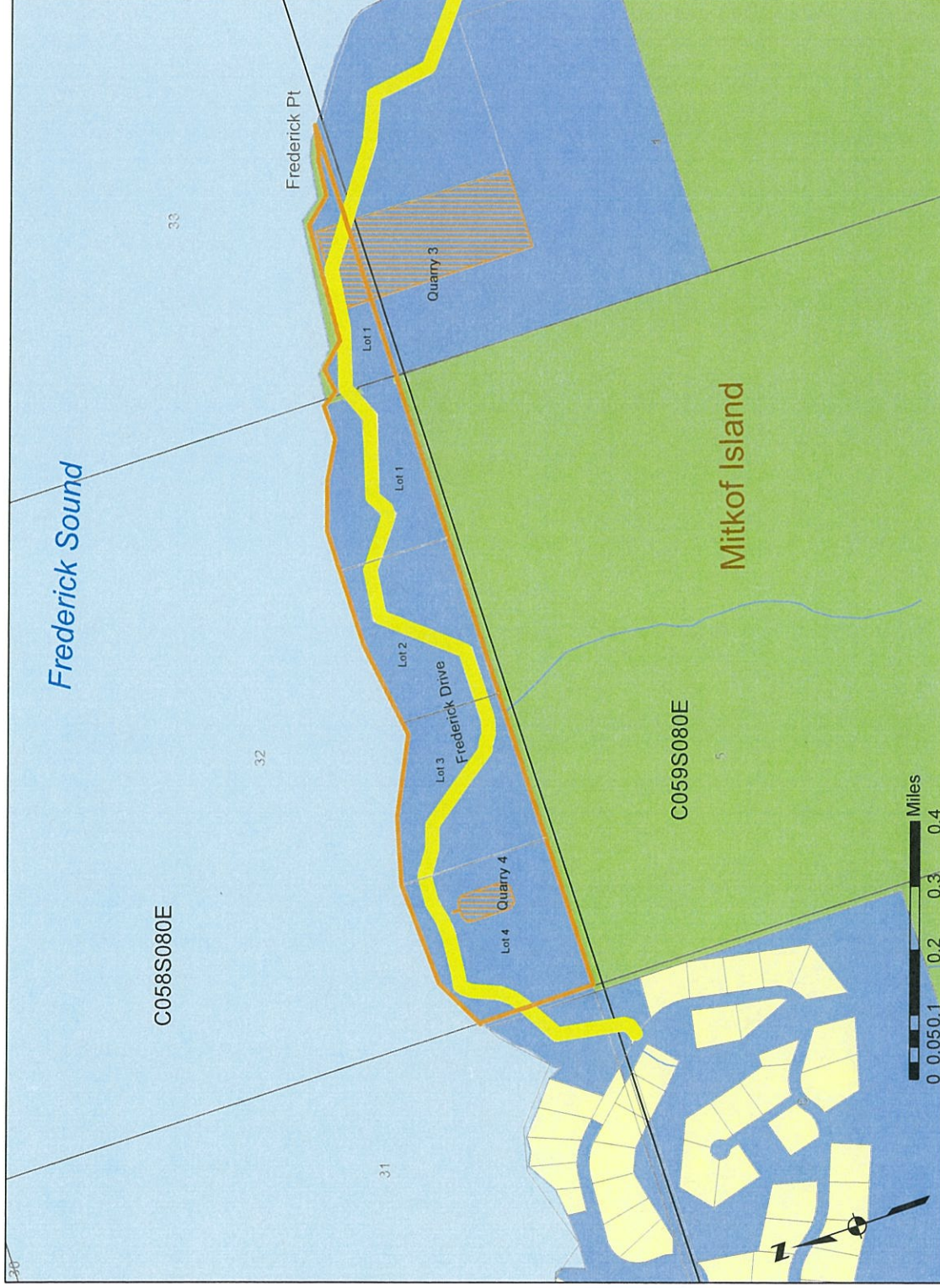
Legend

-  Surveyed Lots
-  Proposed Conveyance
-  Conveyed to Borough
-  State Land, PA or TA
-  Material Site
-  USFS Lands
-  Private Ownership



Created by: SOA-DNR-DMWLW-LCS

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ATTACHMENT E

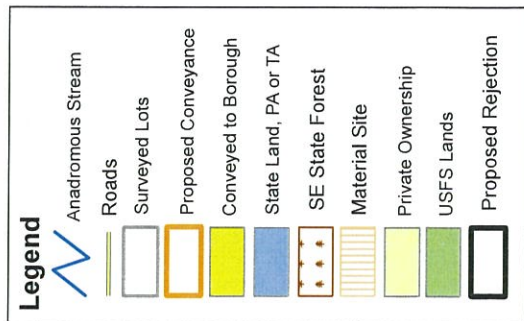
Petersburg Borough

Municipal Selections

ADL 108579

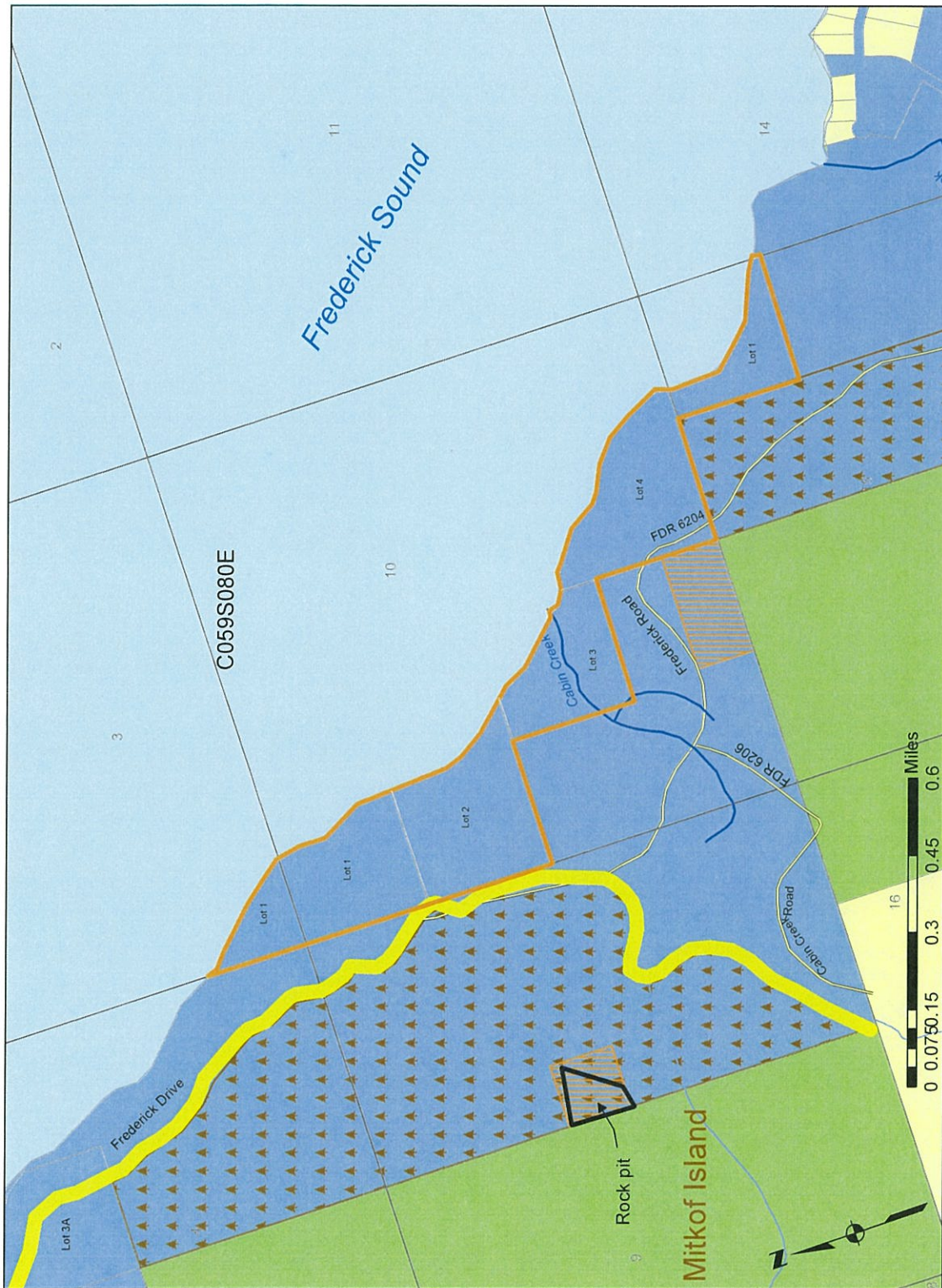
Preliminary Decision

NE Mitkof & Rock pit



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February 2021



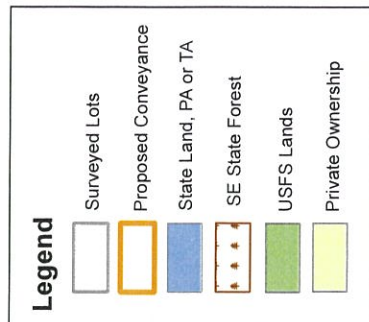
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ATTACHMENT F

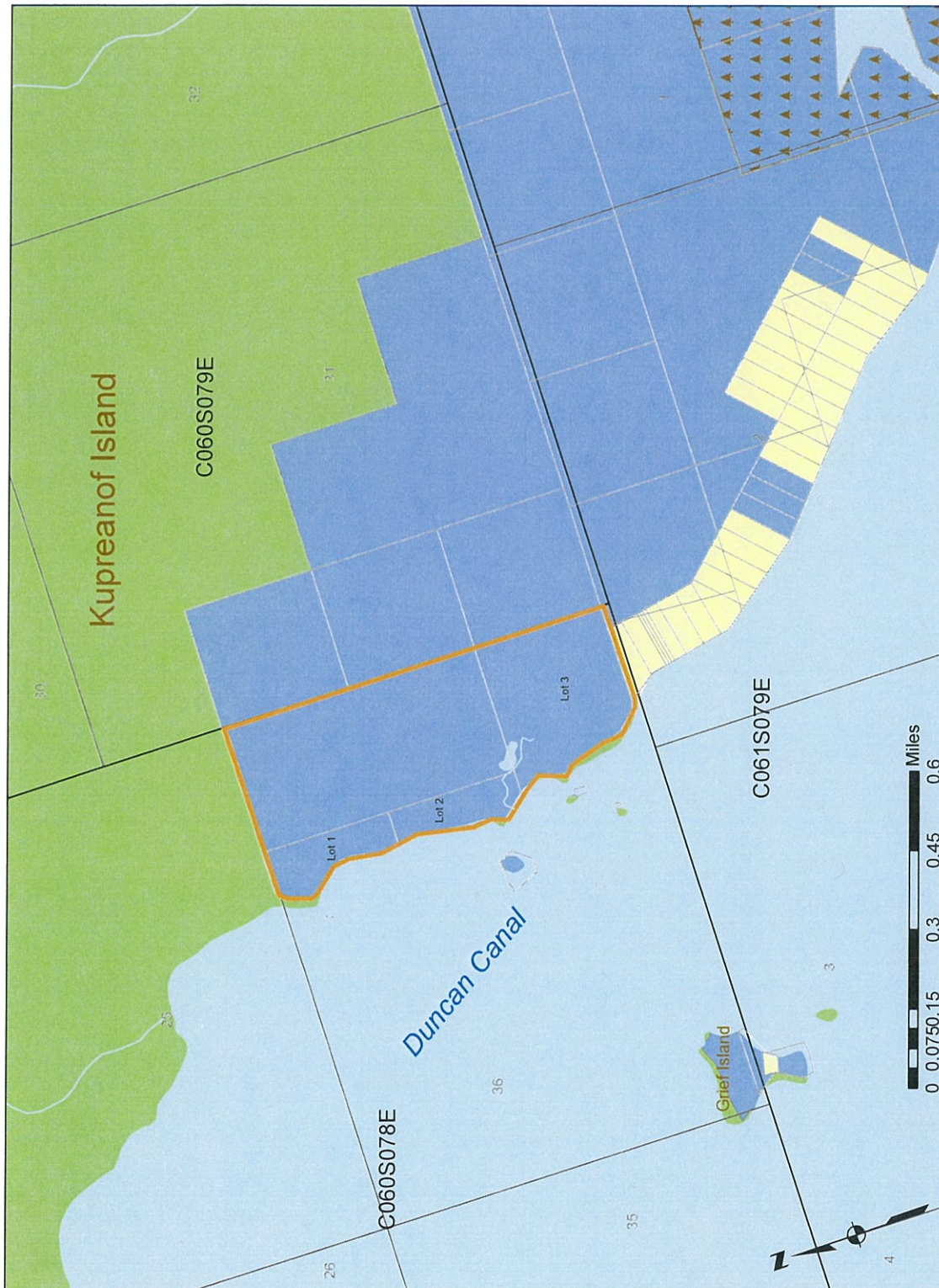
Petersburg Borough
Municipal Selections
ADL 108579
Preliminary Decision

Duncan Canal



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February 2021



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ATTACHMENT G

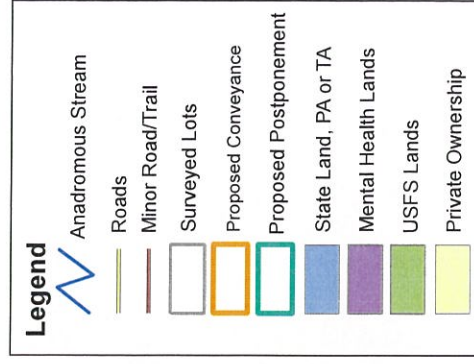
Petersburg Borough

Municipal Selections

ADL 108579

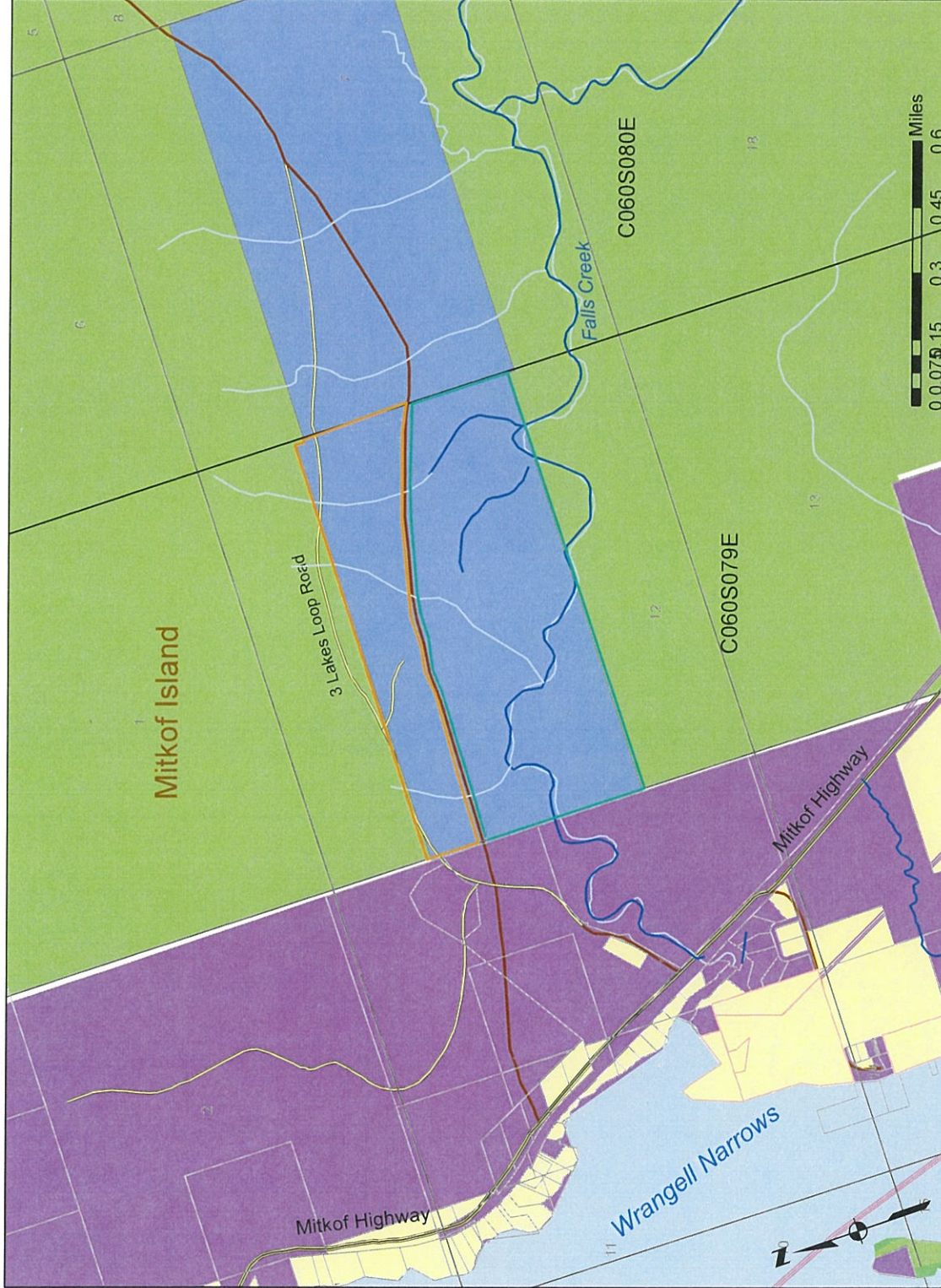
Preliminary Decision

Falls Creek



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February 2021



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ATTACHMENT H

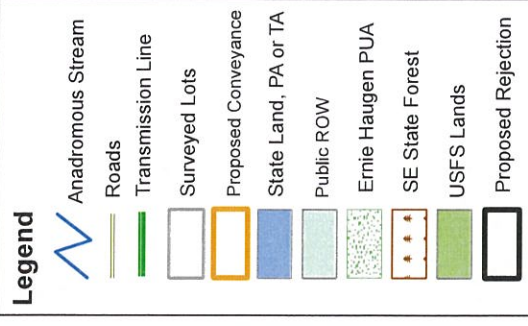
Petersburg Borough

Municipal Selections

ADL 108579

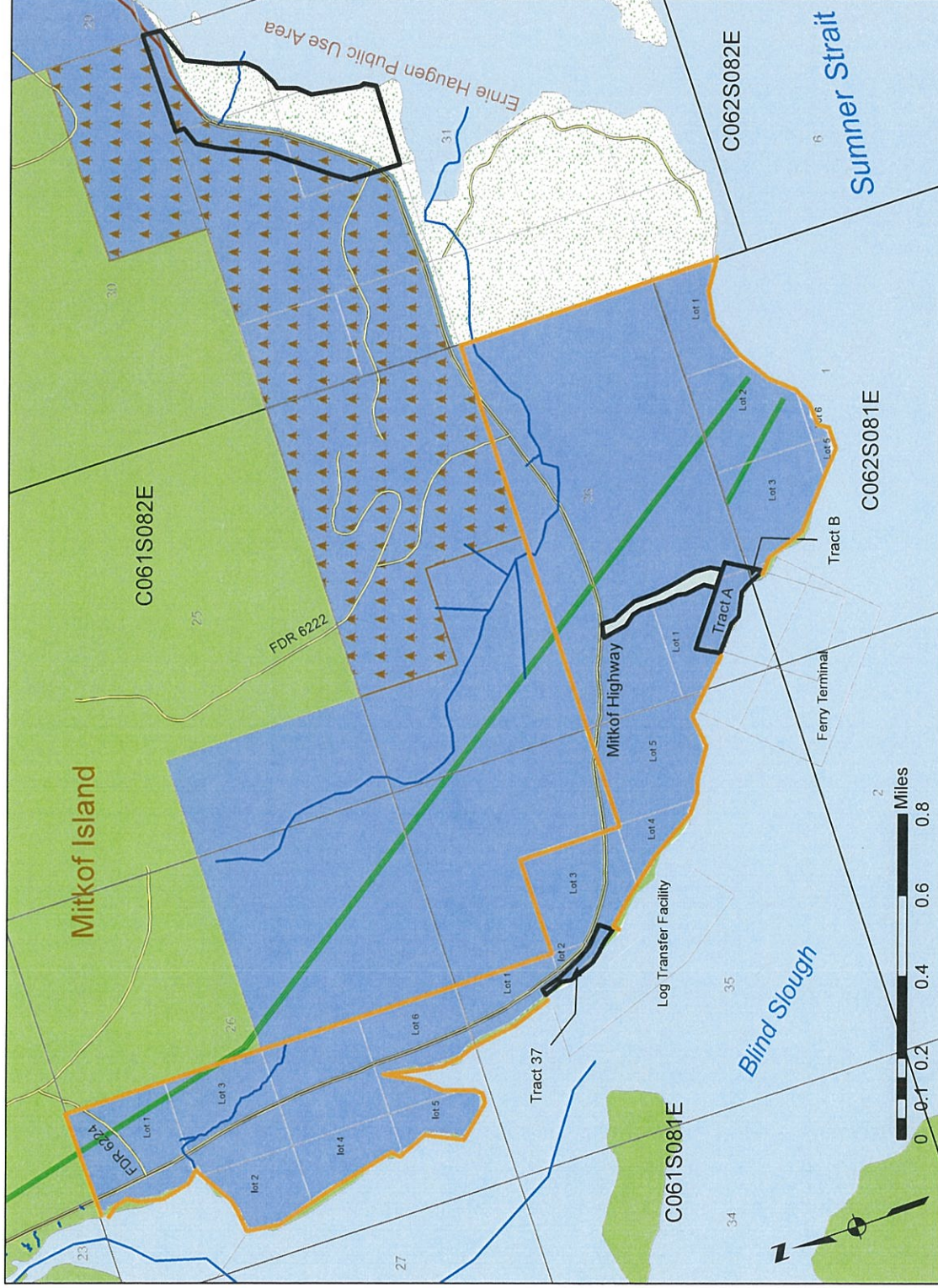
Preliminary Decision

Blind Slough



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February 2021



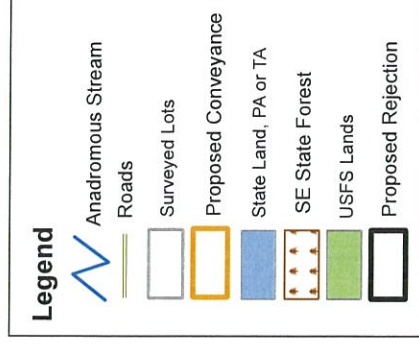
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ATTACHMENT I

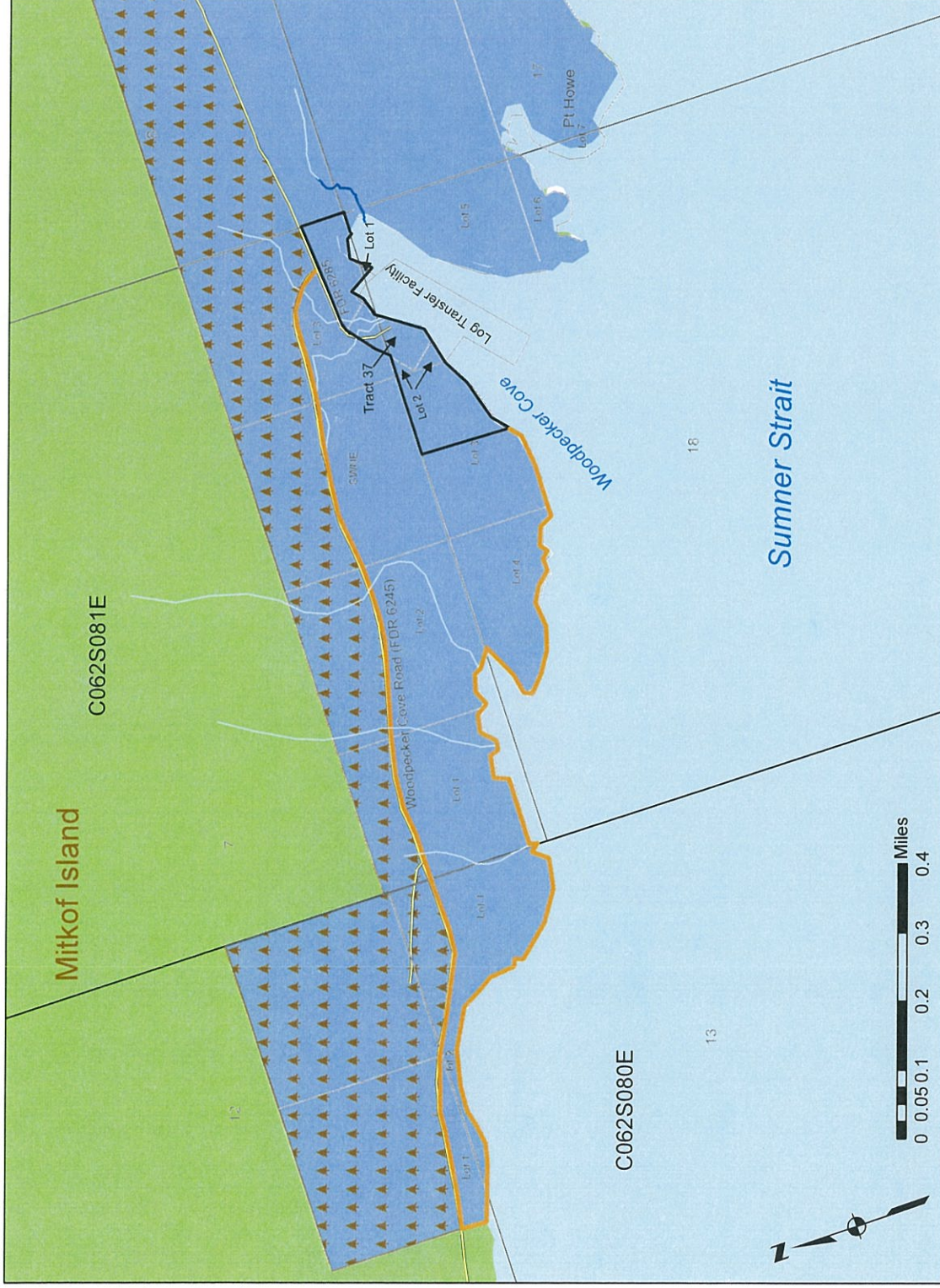
Petersburg Borough
Municipal Selections
ADL 108579
Preliminary Decision

Woodpecker Cove



Created by: SOA-DNR-DMLW-LCS

February 2021



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

Attachment J: PUBLIC NOTICE

Requesting Input for a Proposed Conveyance Under AS 29.65
Petersburg Borough Municipal Land Entitlement Selections – ADL 108579

COMMENT PERIOD ENDS: 4:30 PM, FRIDAY, MARCH 12, 2021

The Department of Natural Resource (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) has prepared a Preliminary Decision (PD) for a proposal to convey approximately 1,452 acres of state owned vacant, unappropriated, unreserved (VUU) general grant land to Petersburg Borough (Borough), in order to partially fulfill their municipal land entitlement under AS 29.65.010. Located within DNR's Southeast Region, these land selections are in two geographical regions of the Central Southern Southeast Area Plan (Region 1. Sumdum-Stephans Passage and Region 3. Petersburg). LCS finds that the proposed conveyance is consistent with the requirements of AS 29.65, and that the Borough's interest in obtaining these state lands outweigh the State's interest in retaining them.

LCS proposes to postpone conveyance of approximately 218 acres. Regarding these parcels, LCS is granting Alaska Department of Fish & Game time to collect additional data on the Falls Creek Tributary and drainage system.

LCS proposes to reject approximately 143 acres of borough selections as LCS has determined that approximately 77 acres are ineligible for conveyance because the selected lands are within Legislatively Designated Areas (Southeast State Forest and Ernie Haugen Public Use Area), and approximately 69 acres will be retained in state ownership for reasons that outweigh the Borough's interest in obtaining the land.

To obtain the notice, Preliminary Decision, or instructions on submitting comment, go to the DMLW Land Sales website at: <http://landsales.alaska.gov/>; the DMLW Municipal Entitlement website at: <http://dnr.alaska.gov/mlw/muni/>; or <https://aws.state.ak.us/OnlinePublicNotices/>. For assistance in obtaining the documents by an alternative method, to request auxiliary aids, services, or special accommodations, contact DNR's Public Information Centers on State work days, Monday through Friday, between 10:00 AM and 5:00 PM in Anchorage at 907-269-8400, Fairbanks at 907-451-2705, or the Southeast Land Office in Juneau at 907-465-3400 (TTY for the hearing impaired for all locations: 711 for Alaska relay or 800-770-8973), or go to <http://dnr.alaska.gov/commis/pic/> for additional contact information. Individuals who require special assistance must request assistance from the Public Information Center in Anchorage no later than 4:00 PM, Friday, March 5, 2021.

Pursuant to AS 38.05.945 Notice, the public is invited to comment on this PD which proposes to transfer ownership of state land to the Petersburg Borough. **The deadline for submitting public comment is 4:30 PM, Friday, March 12, 2021.** Only persons from whom LCS receives timely written comment during the identified comment period will be eligible to file and appeal of the Final Finding and Decision (FFD). Comments must be received in writing to the Division of Mining, Land and Water, Attention: Mary Hermon, at 550 West 7th Avenue, Suite 640, Anchorage, Alaska 99501, by fax at (907) 269-8916, or by email at mary.hermon@alaska.gov. If you have questions, call Mary Hermon at (907) 269-6546.

If no significant change is required, the PD, including any minor changes and a summary of comments and responses, will be issued as the FFD, without further notice. A copy of the FFD will be sent to any persons who commented timely on the PD.

DNR reserves the right to waive technical defects in this notice.