

Debra Thompson

From: Hermon, Mary P (DNR) <mary.hermon@alaska.gov>
Sent: Thursday, April 1, 2021 2:18 PM
To: Mark Jensen; Debra Thompson; Liz Cabrera; Stephen Giesbrecht
Subject: PD for Petersburg ADL 108981 Thomas Bay Subd
Attachments: ADL 108981 petersburg thomasbay pd_signed.pdf

Re: Preliminary Decision for Petersburg Borough, ADL 108981.

I have attached the Preliminary Decision for Petersburg Borough municipal entitlements (Thomas Bay Subdivision). The map and public notice are within the file document. You will also receive a letter and public notice via post office mail.

The public notice can also be found at:

<http://dnr.alaska.gov/commis/pic/pubnotfrm.htm>

The comment period ends May 3, 2021.

I am available if you have questions, however, official comments must be made in writing and will be addressed in the Final Finding and Decision.

Thank you very much for your patience in this adjudication.

Sincerely,

Mary Hermon

Land Conveyance Section

Municipal Entitlements

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

PRELIMINARY DECISION
PROPOSED CONVEYANCE OF STATE LAND UNDER AS 29.65.010

PETERSBURG BOROUGH
MUNICIPAL LAND ENTITLEMENT SELECTIONS
ADL 108981

PUBLIC COMMENT PERIOD ENDS 4:30 PM, MONDAY, MAY 3, 2021

I. PROPOSED ACTION

Preliminary Decision: Petersburg Borough Municipal Land Entitlement Selections – ADL 108981
Attachment A: Thomas Bay
Attachment B: Public Notice

Primary Proposed Action: The State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) proposes to convey 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*. See *Attachment A: Thomas Bay* for a depiction of the project area.

The Borough has selected subdivision (Thomas Bay Subdivision) parcels contained in Region 3 (Petersburg) as identified in the Central/Southern Southeast Area Plan¹ (CSSAP). Approximately 701 acres will be adjudicated in this decision.

LCS proposes to convey approximately 616 acres of state owned vacant, unappropriated, unreserved (VUU²) general grant land. Regarding these parcels, DNR has determined that there are no over-riding state interests that merit retaining these selections in state ownership.

LCS proposes to reject the conveyance of approximately 85 acres of borough selections because the land is ineligible for conveyance for reasons stated in the CSSAP and that it be retained to the State.

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 comments on this Preliminary Decision (PD).

See **Section VII. Submittal of Public Comments** at the end of this document and *Attachment B: Public Notice* for details on how to submit a 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.

¹ 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).

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 *Reservations*, 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 case files Alaska Division of Lands (ADL) 108981, 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 proposal, under the statutes described in the preceding **Section II. Authority**, is limited and specific to a determination of whether it is found to be appropriate to convey the subject parcels to the 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 the Petersburg Borough's municipal entitlement land selections meet the 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 (east 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 general 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 a 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.

<i>Borough/Municipality:</i>	Petersburg Borough
<i>Meridian:</i>	Copper River (CRM)
<i>Regional Native Corp.:</i>	Sealaska Corporation
<i>Tribes:</i>	Central Council of the Tlingit and Haida Indian Tribes of Alaska, Petersburg Indian Association
<i>USGS Map Coverage:</i>	Petersburg Quadrangle (1:250,000) Petersburg D-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 interest 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 the Interior, Bureau of Land Management (BLM). The State will only convey the land estate on lands approved for conveyance 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
Thomas Bay	C056S079E35	NFCG 124	PA 50-2004-0112 12/29/2003	ADL 106536 Agreement/Settlement, Approved, Quiet Title ADL 108379 Land Sale Project, Auction Brochure (<i>Thomas Bay Alaska Subdivision</i>) Forest Development Road 6256 (60' ROW)
	C057S080E03 C057S080E04 C057S080E09 C057S080E10	NFCG 124	PA 50-99-0205 4/16/1999	ADL 106536 Agreement/Settlement, Approved (Sections 3, 4, and 9), Quiet Title ADL 108379 Land Sale Project, Auction Brochure (<i>Thomas Bay Alaska Subdivision</i>) Forest Development Roads 6010, 6103, 6252, and 6256 (all 60' ROW)

VI. PRELIMINARY DECISION

A. Background

In January of 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 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) was subtracted from Petersburg Borough's certified entitlement, which left 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's conveyed lands, the final entitlement was 14,208 acres. A previous decision adjudicated approximately 1,813 acres, of which approximately 1,496 acres were approved for conveyance. This preliminary decision addresses a selection sent in 2019.

B. Planning, Classification and Mineral Orders

1. Planning

The land selections fall into one geographic management unit (P-01). 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). 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) and Public Recreation (PUR) which are all conveyable classifications as municipal entitlement general grant land under AS 29.65, unless an overriding state interest exists as stated in the management intent. The designation Harvest (Hv), which converts to a non-conveyable classification of Wildlife Habitat, is also included in Unit P-01, however, it does not cover the Borough selections. The management intent for P-01 is for multiple uses, particularly recreation and for current and future forest values. The area is used extensively by Petersburg residents for fishing and hunting, with the logging roads and streams and lakes receiving the most use. Table 2 below 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
Thomas Bay	T56S, R79E	35	56	P-01	RMG PUR (Tracts A, D)	Multiple uses Retain tracts
	T57S, R80E	03, 04, 09	645			

3. Mineral Orders

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

Mineral Order (MO) 275 closed mineral entry for all parcels within the Thomas Bay Subdivision. There are no other known mineral orders affecting the Borough's selections within this ADL.

C. Traditional Use Finding

In an unorganized borough, disposal of state land with traditional uses is to be 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 19.10.010*, *AS 19.30.400 Identification and Acceptance to Rights-of-Way*, *AS 38.05.125*, *AS 38.05.127*, and *11 AAC 51*.

Frederick Sound and Sumner Straight are the major travel corridors for ferries, ships, and boats in this southeast region of Alaska. Primary travel to Thomas Bay is via floatplane or boat. The Thomas Bay area contains a small road system within its immediate area because of a developing subdivision (*Thomas Bay Alaska Subdivision*, ASLS 81-235). Many of the secondary roads are previous forestry service roads. 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 Section Line Easements*, a public access easement 100 feet wide 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.

In 1982, the Department of Transportation & Public Facilities (DOT&PF) vacated section-line easements within this area (Plat No. 82-17, Easement Vacation Plat EV-2-228 filed October 21, 1982) but did not vacate any other dedicated public right of ways. The existing right of ways and easements should be maintained in this land conveyance request.

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 are present in the Thomas Bay area, are reserved to the U.S. (r/w AA45079) with a 60-foot ROW as stipulated in Section 6(a) of the Final Partial Judgment, United States v. State of Alaska, et al., Civil No. A86-630, August 6, 1987. There are no RS 2477 rights-of-way with the selected lands.

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 to 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 MHWM 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 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. Legal public access is generally limited to easements typically 100 feet wide on section lines (SLE) and typically 50 feet wide along the OHWM and MHWM of navigable and public water bodies (the 'along' easement, see below).

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 MHHW 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* 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.

There are no navigable waters that are bordering or within the selected lands.

Public Waters: Waterbodies determined to be public waters under 11 AAC 51.035 are identified in Table 3. These waterbodies may or may not be 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 #	Pub Access Easement (to & along)
Thomas Bay	C056S079E35 C057S079E04 C057S079E09	Unnamed lake Unnamed lake Unnamed lake and streams	none	On the bed and 50 feet upland

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 by the DNR DMLW Statewide Abatement of Impaired Lands (SAIL) Section, Alaska Resource Data files (ARDF) GIS data of historic mining properties, and the following DEC GIS layers of DEC Solid Waste, Contaminated sites, PFAS, groundwater plumes, and drinking water source protection areas, none of the aforementioned data layers show sites within a mile of the proposed conveyance, and therefore present no issues within the selected lands.

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. Petersburg 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

LCS has not physically inspected all areas of the selected lands for the presence of unauthorized use and is unaware of any other existing unauthorized use within the land selections.

The Borough is expected to inspect all of 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.

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. At this point in time, no historical cultural resources have been found in the selected area.

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. DMLW and 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. Information and comments received from multiple sections within DMLW prior to and during agency review have been considered and included in the preparation of this preliminary decision. Agency review was conducted from January 14, 2021 through February 2, 2021. Comments pertinent to this proposed action and responses from agency review are included below.

DNR DMLW LCS received brief comments of non-objection from the following agencies:
DNR Division of Parks and Outdoor Recreation – Southeast Region and DNR DMLW Resource Assessment and Development Section

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

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

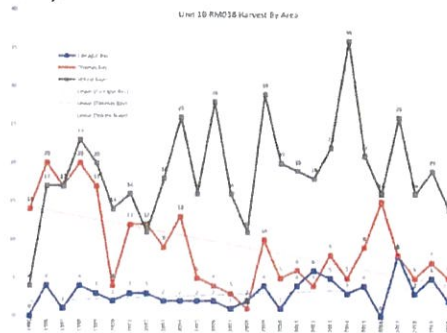
This area is within Unit P-01 of the Central/Southern Southeast Area Plan (CSSEAP), which identifies the managed resources of the parcel as timber, habitat/wildlife, anadromous streams and dispersed recreation. The majority of this unit was co-designated as General Use and Harvest land, with smaller tracts designated as Material Sites, Public Recreation and Tourism-Undeveloped and Public Facilities.

The CSSEAP highlights the importance of this area for moose habitat and associated hunting opportunities and establishes the intent to manage the parcel for these values. The CSSEAP acknowledges that much of the habitat value of the parcel for moose (and deer) is the result of forest thinning through timber harvest practices and the subsequent forest succession leading to increased browse availability. However, as identified in the CSSEAP, the remaining portions of old growth forest in the area are important wintering habitat for moose and deer. While forest succession over the ensuing 20 years since the plan was adopted has altered the habitat value of the parcel, current information from ADF&G wildlife managers reaffirms the importance of this area for moose, deer, black bear and mountain goats. The relatively small size of this area (all of Unit P-01 is only 2,273 acres), provides a disproportionate value to wildlife as it is essentially an island of suitable habitat surrounded by oceans and mountains.

As previously mentioned, the remaining old growth forest in the area is particularly important. Much of the critical wintering habitat for deer has been logged, and winter habitat in the form of low elevation, high volume old growth forest is the most important and most limiting habitat for deer in Thomas Bay. According to United States Forest Service (USFS) data, historically only 6,344 acres of Thomas Bay was estimated to be south facing productive old growth (POG) below 800' elevation, of which 4,995 acres (79%) remains. However, of all POG below 800' elevation a total of 10,256 acres remains, only 66% of the

historic amount. The remaining POG also provides habitat for moose, black bear, and mountain goats.

While forage for moose has declined as secondary habitat has matured, and the Thomas Bay moose harvest has also declined, recreational use of the area for deer and moose hunting still remains high. The area is a popular hunting destination for Petersburg residents and Point Agassiz cabin owners, and is still the second most important moose harvest area Unit 1B (See figure below).



ADF&G would concur with the CSSEAP, which recommends to retain portions of this parcel, particularly any remaining stands of old growth forest, in state ownership. While much of the state subdivision (ASLS 81-235) were designated as General Use and hence conveyable, previous attempts to dispose of these lands were met with opposition from the community because of the recreation value of the tract. ADF&G believes that these lands are still highly valuable for hunting purposes. Additionally, Tracts A and D are recommended by the CSSEAP for retention. These tracts contain water bodies, that while not cataloged in ADF&G's Anadromous Waters Catalog, likely support resident and/or anadromous fishes.

Furthermore, given the extremely low gradient/elevation terrain and proximity to the Patterson River, it is likely that there are several more streams supporting anadromous fish in the conveyance area. The presence of any streams within the conveyance area should be definitively located and at a minimum will be subject to 50' easements upland of ordinary high water pursuant to AS 38.05.127.

DNR DMLW LCS Response to ADF&G: LCS understands the importance of the recreational value of this unit. While most of the unit is classified WHB, the subdivision is classified RMG and PUR and is intended for multiple uses. Per the CSSAP, Tracts A and D will be retained within state ownership. This would assist in the protection of the lakes and streams within the Tracts, however, 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 regardless of their location within the selected lands.

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

The Alaska Department of Transportation & Public Facilities has no comment but cautions, generally, that existing and proposed right of ways and related transportation facilities shall be preserved in State ownership in accordance with State and Federal laws and regulations.

Comments from DOT&PF, Southcoast Region Right of Way (SCR ROW):

In 1982 DOT&PF vacated section-line easements within this area but did not vacate any other dedicated public right of ways. The existing right of ways and easements should be maintained in this land conveyance request.

DNR DMLW LCS Response to DOT&PF and SCR ROW: The rights-of-way for the Forest Development Roads were reserved in the patent to the State and will be maintained per AS 19.10.010. LCS acknowledges the vacation (Plat 82-17) of the section line easements that run through this platted subdivision (Plat 82-16).

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

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

VII. SUBMITTAL OF PUBLIC COMMENTS

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

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

In accordance with AS 38.05.946(a), 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://dnr.alaska.gov/mlw/muni/> and 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 *Attachment B: Public Notice*.

**DEADLINE TO SUBMIT WRITTEN COMMENT IS
4:30 PM, MONDAY, MAY 3, 2021**

VIII. DISCUSSION AND ALTERNATIVES

A. Discussion

This preliminary decision for the Petersburg Borough municipal entitlement land selections covers approximately 701 acres of state land. DNR proposes to approve for conveyance and transfer equitable title and management authority on approximately 616 acres of state land, identified in **Table 4** below. It also rejects approximately 85 acres of municipal selections. These lands are to be retained in state ownership for reasons outlined below, and are identified in **Table 5**.

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

- The Borough selected Tracts A and D of ASLS 81-235, *Thomas Bay Subdivision*, which is identified in the CSSAP to be retained in state ownership.

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, that 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 pertinent state statutes and administrative code.

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 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

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

The 50-foot section line easement (AS 19.10.010 and 11 AAC 51.025) normally imposed as a public access easement has been vacated per Section Line Easement Vacation Plat EV-2-228, Plat 82-17, filed in the Petersburg Recording District on October 21, 1982. The platted roads within the subdivision give adequate access to the various lots within Section 35, Township 56 South, Range 79 East, and Sections 3, 4, 9, and 10, Township 57 South, Range 80 East, Copper River Meridian.

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 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.

Table 5 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 CSSAP states the land will be retained by the State.

Table 5

Map Name	Copper River MTR	Section and Legal Description Thomas Bay Subdivision ASLS 81-235, Plat 82-16	Acres
Thomas Bay	T56S, R79E	Sec. 35: Portion Tract A (52.624 ac.)	52.624
	T56S, R80E	Sec. 04: Portion Tract A (8.85 ac.), Tract D (23.522 ac.)	32.372
PROPOSED REJECTION: TOTAL APPROXIMATE ACRES			84.996

D. Preliminary Decision

The following are the findings for this Preliminary Decision:

1. That it is appropriate to convey approximately 616.203 acres of state-owned land to Petersburg Borough. This decision determines that the interest of the State to retain this land does not outweigh the interests of the Borough to obtain it.
2. That it is appropriate to reject 84.996 acres of borough land selections because the CSSAP states Tracts A and D will be retained by the State.

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

4-1-2021
Date

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

4-1-2021
Date

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

Attachment B: PUBLIC NOTICE

Requesting Input for a Proposed Conveyance Under AS 29.65
Petersburg Borough Municipal Land Entitlement Selections – ADL 108981

COMMENT PERIOD ENDS 4:30 PM, MONDAY, MAY 3, 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 616 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 one geographical region of the Central Southern Southeast Area Plan (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 reject approximately 85 acres of borough selections as LCS has determined that the land 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, Monday, April 26, 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, Monday, May 3, 2021.** 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 (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.

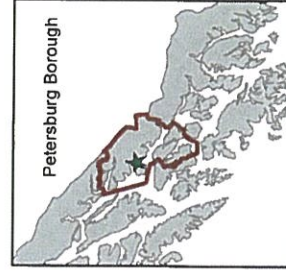
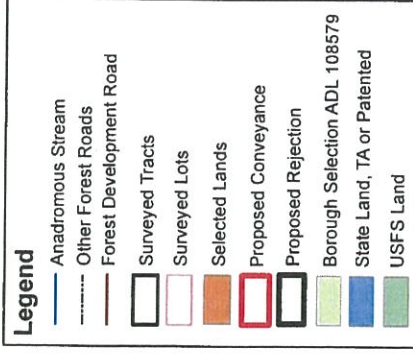
If no significant change is required, the PD, including any minor changes and a summary of comments and responses, will be issued as the FFD, without further notice. A copy of the FFD will be sent to any persons who commented timely on the PD.

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

ATTACHMENT A

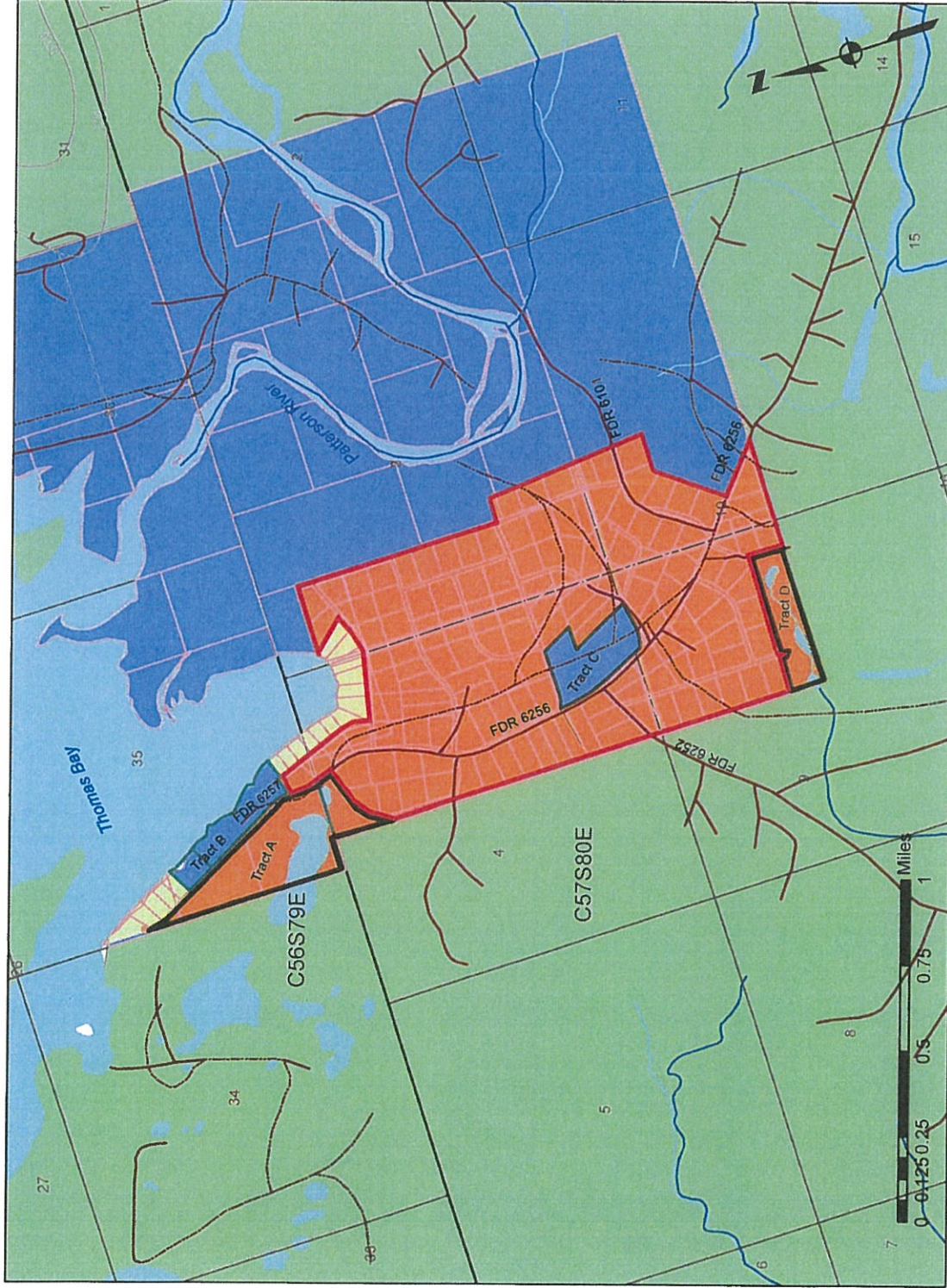
Petersburg Borough Municipal Selections Preliminary Decision

Thomas Bay Subdivision ADL 108981



DNR-DMLW/LCS-ME

April 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.