

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

PRELIMINARY DECISION
ADL 109381

Proposed Tide and Submerged Land Conveyance to the Petersburg Borough
AS 38.05.035(e), AS 38.05.825

RELATED ACTIONS
None

PUBLIC COMMENT PERIOD ENDS 4:00 PM, WEDNESDAY, OCTOBER 29TH, 2025.

I. Proposed Action

Preliminary Decision: Proposed Tide and Submerged Land Conveyance to a Municipality ADL 109381

Attachment A: Vicinity Map

Attachment B: Site Development Diagram

Attachment C: Affidavit Acknowledging Conditions of Land and Releasing the State from Related Liability

Attachment D: 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 one parcel of State-owned tide and submerged land to the Petersburg Borough (Borough), pursuant to Alaska Statute (AS) 38.05.825 Conveyance of Tide and Submerged Land to Municipalities. The subject parcel encompasses the area required for a public moorage, an extension of the existing rock jetty breakwater, and a boat haul-out ramp at the north end of Scow Bay and within the Wrangell Narrows, totaling approximately 21 acres, more or less. See *Attachment A: Vicinity Map* and *Attachment B: Site Development Diagram* for a depiction of the subject parcel.

This decision determines whether the Borough's request for tide and submerged land meets the requirements for conveyance in accordance with AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities, the Submerged Lands Act of 1953, and the Equal Footing Doctrine.

Proposed Related Actions: No related actions proposed.

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

See **Section XV. Submittal of Public Comments** at the end of this document and *Attachment D: Public Notice* for details on how to submit a comment for consideration. If, after

Preliminary Decision

AS 38.05.825 Tide and Submerged Land Conveyance – ADL 109381

Page 2 of 15

consideration of timely, written comments, LCS moves forward with the proposal, a Final Finding and Decision (FFD) will be issued.

II. Authority

DNR has the authority under AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities to convey State-owned tide and submerged lands if, on preparation and issuance of a written finding, it is determined to be in the best interest of the State, as required by AS 38.05.035(e) Powers and Duties of the Director. Article VIII, Section 1 of the Constitution of the State of Alaska states, "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

III. Administrative Record

Tide and submerged land conveyance case file ADL 109381 constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Central/Southern Southeast Area Plan (CSSEAP) adopted in November 2000 and associated land classification files;
- Petersburg Borough Comprehensive Plan Update, Feb. 22, 2016;
- Petersburg Borough Waterfront Master Plan, Feb. 22, 2016;
- Alaska Department of Fish and Game Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes; and
- DNR case files: Alaska Tideland Surveys (ATS) No. 1695 and Municipal conveyance ADL 107499.

IV. Scope of the Proposal

The scope of this proposal, under the statutes described in the preceding **Section II. Authority**, is limited and specific to the determination of whether it is in the State's best interest to convey the subject parcel to the Borough under AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities. It also includes identifying any third-party interests, other interests of record, and stipulations necessary to ensure that statutory requirements have been met. This decision does not consider any future development, or the effects of such development, that may occur after the transfer.

V. Description

- a. Location: The subject parcel is located within DNR's Southeast Region, on tide and submerged lands within the Wrangell Narrows, seaward of Tract A of Alaska State Tideland Survey No. 1695, within Petersburg Borough.

USGS Map Coverage: Petersburg D-3

Municipality: Petersburg Borough

Regional Corporation: Sealaska Corporation

Federally Recognized Tribe: Petersburg Indian Association

Village Corporation: N/A

- b. Legal Description: That portion of State Tidelands within the S½ of Protracted Section 4 and the NE¼ of Protracted Section 9, Township 59 South, Range 79 East, Copper River Meridian; located westerly of Tracts A and B of Alaska State Tideland Survey No. 1695, South of Alaska Tideland Survey No. 605, and

Preliminary Decision

AS 38.05.825 Tide and Submerged Land Conveyance – ADL 109381

Page 3 of 15

seaward of: Tract 1 of Hofstad Subdivision, Lot 3A of Reid Family Trust Subdivision, and Lots 1 and 2 of Winther Subdivision; containing approximately 21 acres, more or less.

- c. Title: The State received title to the tide and submerged lands at statehood through the Alaska Statehood Act and the Submerged Lands Act in 1953. The Equal Footing Doctrine applies to the selected tide and submerged land. Further confirmation of title took place with Quiet Title Act Disclaimer from the U.S. Department of Justice in Original 128 (546 U.S. 413). A Title Report has been requested for the subject parcel. As of the issuance date of this decision, the report remains outstanding; however, to ensure timely issuance of this decision, a careful review of the area was completed to identify title issues associated with this tide and submerged land. Any title actions identified by the outstanding title report and omitted from this decision will be incorporated into the FFD and addressed accordingly.
- d. Background: Currently, the subject parcel contains no infrastructure. ADL 107499, which used to be a State-owned seaplane facility before it was conveyed to the Borough, is directly east of the subject parcel. It includes a shallow haul-out ramp and a small rock jetty breakwater.¹ The haul-out ramp was built at a nine percent gradient to accommodate seaplane recovery, making it too shallow for trailer boats. Additionally, the haul-out ramp is too short to use throughout the tidal cycle. There have been reports of difficulties launching and retrieving vessels when it is windy or at low tide.² Upon acquiring the property, the Borough plans to reconstruct the haul-out ramp at a twelve percent gradient and expand the maritime infrastructure at ADL 107499. This expansion would involve extending the end of the breakwater and haul-out ramp into the subject parcel. Additionally, the Borough aims to use the subject parcel for constructing public moorage.³

The Borough's 2016 Comprehensive Plan Update and Waterfront Master Plan details the thought process behind their application for tide and submerged lands. The Scow Bay area had recently expanded and needed basic harbor infrastructure.⁴ The Borough identified an opportunity to bolster on-shore fish processing and related marine support services, along with warehousing and processing for value-added or new seafood products within Scow Bay. This initiative has the potential to stimulate industry growth⁵ and act as a catalyst for private sector investment.⁶ Furthermore, the Borough believes that expanding waterfront facilities at Scow Bay will benefit recreational fishing, commercial tourism, outdoor excursions, and waterfront access.⁷

¹ Scow Bay Development Plan Narrative, p.1.

² Scow Bay Development Plan Narrative, p.1.

³ Site Development Diagram.

⁴ Comprehensive Plan Update, p. 132.

⁵ Comprehensive Plan Update, p. 59.

⁶ Comprehensive Plan Update, p. 132.

⁷ Petersburg Borough Waterfront Master Plan, p.18-19.

Preliminary Decision

AS 38.05.825 Tide and Submerged Land Conveyance – ADL 109381

Page 4 of 15

On May 2, 2024, the Borough submitted an application for the conveyance of tide and submerged lands under AS 38.05.825. As reflected in their site development diagram, the Borough plans to construct a functional boat haul-out and work yard, a boarding float, a vessel washdown area, and utilities, as well as updated and expanded moorage facilities. The subject parcel would be used for public moorage, the extension of a new boat haul-out ramp, and the extension of the existing rock jetty breakwater.

On May 20, 2024, the Petersburg Borough Assembly passed and approved Resolution #2024-07. In this resolution, the Borough Assembly requested the conveyance of the applied-for tidelands under AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities. Furthermore, the resolution stated that the Borough would fund and conduct a tideland survey of the area if necessary to provide legal boundaries.

The lands adjacent to the applied-for tidelands include Petersburg Borough owned uplands; privately owned uplands; ADL 107499, a municipal tideland conveyance to the Petersburg Borough; ADL 34001, a pre-statehood tideland preference right to an individual; and ADL 19202, an Interagency Land Management Transfer with the Department of Transportation & Public Facilities. Currently, there are no known uses or potential conflicts with this land.

Anadromous Water Catalog No.106-44-10018, an anadromous stream, is located within the northeastern portion of the parcel. The applicant will consult with ADF&G to determine whether a fish habitat permit is required for the parcel's development.

AS 38.05.825(a) Conveyance of Tide and Submerged Land to Municipalities requires DNR to convey to the municipality tide and submerged lands suitable for occupation and development when requested by the municipality unless it is found that public interest in retaining State ownership clearly outweighs municipal interest. The municipality must apply for conveyance, the tide and submerged lands must be within the boundaries of the municipality, the use cannot unreasonably interfere with navigation or public access, the land may not be subject to a shore fisheries lease under AS 38.05.082 Leases for Shore Fisheries Development, the land classification must be consistent with or compatible with the proposed use, and the land must be required for a public or private development approved by the municipality. The Borough has met the application requirements of the statute through the following:

- Public Interest - The public interest in retaining the lands within the subject parcel in State ownership does not outweigh the municipal interest in managing these submerged lands. The Borough plans to operate and maintain a facility that will be used by the public. LCS believes that there are no other overriding State interests in the subject parcel for conveyance; the municipal interest clearly rises above the public interest in retaining these lands in State ownership.
- Location - The land is within the boundary of the municipality.

Preliminary Decision

AS 38.05.825 Tide and Submerged Land Conveyance – ADL 109381

Page 5 of 15

- Navigation - The proposed use would not unreasonably interfere with navigation. An open channel for navigation will exist between the Borough-owned tidelands and the maritime infrastructure improvements.
- Public Access - The proposed use would not unreasonably interfere with public access.
- Application - The Petersburg Borough submitted a complete application for conveyance.
- Shore Fisheries Leasing - The land is not subject to a shore fisheries lease.
- Land Classification - The land classification in the CSSEAP is consistent with the proposed action.
- Municipal Approval of Development - The Petersburg Borough Assembly supports the conveyance of the applied-for tidelands to create “a boat haul-out facility and boat harbor, specifically designed to serve the needs of the local community and maritime market, thereby enhancing public access” in Petersburg Borough Resolution No. 2024-07.

e. Planning, Classification, and Mineral Orders:

- i. Planning: The subject parcel is located within the CSSEAP, Region 3, Units PT-16 and PT-36. The plan designates the subject parcel as Waterfront Development (Wd), Shoreline Use (Sd), Public Recreation – Dispersed Use (Ru), Habitat (Ha), and Harvest (Hv). These designations convert to classifications of Settlement land, Wildlife Habitat land, Waterfront Development land, and Public Recreation land.

AS 38.05.825(a)(5) Conveyance of Tide and Submerged Land to Municipalities, requires that land to be conveyed must either be “classified for waterfront development or for another use that is consistent or compatible with the use proposed by the municipality, or the proposed use of the land is consistent or compatible with a land use plan adopted by the municipality or the department.” 11 AAC 55.215 describes Waterfront Development Land as “tideland, submerged land, or shoreland that is suitable to be used for commercial or industrial activities such as fish processing, aquatic farming, mineral and log transfer facilities, or commercial recreation.

The CSSEAP states that the plan’s management intent for Unit PT-16 is as follows⁸:

Management Intent: Maintain the high fish and wildlife values and fishing and wildlife viewing opportunities while still maintaining public access to the private uplands, including Mental Health Trust properties.

Resources: This unit is a waterfowl fall, winter and spring concentration area and shorebird spring and fall concentration area. Vancouver Canada geese concentrate in the southern portion of the unit. Juvenile pink, coho and king salmon rear in this

⁸ CSSEAP, page 3-152.

Preliminary Decision

AS 38.05.825 Tide and Submerged Land Conveyance – ADL 109381

Page 6 of 15

parcel. The unit is a community harvest area for coho and king salmon and a Dungeness crab community and commercial harvest area.

Information: Residential uses or areas of residential zoning (City of Petersburg) adjoin this parcel. The Sd designation is intended to support upland development, and corresponds to the City of Petersburg zoning ordinance. The unit lies along Wrangell Narrows, a well-traveled route for the Alaska Marine Highway, cruise ships, charter boats and personal watercraft.

The CSSEAP states that the plan's management intent for Unit PT-36 is as follows⁹:

Management Intent: Protect the bio-diversity and fish and wildlife abundance in this unit while still allowing shoreline development. Mitigation such as the use of pilings for offshore development may be needed for certain construction projects. Protect consumptive and nonconsumptive uses of fish and wildlife.

Resources:

Wrangell Narrows may support the largest concentration of over-wintering waterfowl and gulls in southeast Alaska. From October through March thousands of oldsquaw and scooters (mostly surf and white-winged) concentrate from Scow Bay to offshore areas at the mouth of the Narrows. A significant number of harlequin ducks also uses the area during this period. In spring and fall large numbers of puddle ducks such as mallards and widgeon, and bay ducks such as goldeneye (both species) and bufflehead concentrate in nearshore/intertidal areas of the Narrows. The portion of the Narrows behind Sasby Island at the north end of the Narrows is a Vancouver Canada geese over-wintering area and black bear spring concentration area. Thousands of gulls concentrate at the north end of the Narrows from mid summer through spring. Shorebirds, especially rock sandpipers, may be seen along the shoreline during the fall, winter and spring. Red-necked phalaropes concentrate in Frederick Sound off the mouth of the Narrows in the fall. Large concentrations of euphasids (krill) sometimes wash up on the shore where a virtual feeding frenzy by waterfowl and gulls ensues. The Narrows is a year-round Pacific herring and sea lion concentration area. The sea lions make daily migrations from the Horn Cliffs rookery across Frederick Sound to the Narrows to feed. Large schools of juvenile pink and chum salmon concentrate along the shorelines in spring. These rearing/outmigrant salmon attract large numbers of Dolly Varden char to the area. Bald eagles concentrate in the portion of the Narrows from Petersburg

⁹ CSSEAP, page 3-160.

Preliminary Decision

AS 38.05.825 Tide and Submerged Land Conveyance – ADL 109381

Page 7 of 15

to Scow Bay, particularly in spring and summer. As many as 70 eagles may sometimes be seen at one time. Ravens are abundant along the shoreline where they feed in the intertidal zone during low tide. The Scow Bay area is a summer foraging area for osprey.

The Narrows, particularly around Petersburg is a popular community harvest area for Dolly Varden char. King and coho salmon are harvested both commercially and by sport fishers throughout the Narrows. The Narrows, particularly at the mouth and in Scow Bay, is a community harvest area for halibut. From Scow Bay southward this unit is a community and commercial harvest area for Dungeness, red king and tanner crab. Wrangell Narrows is a natural attraction to fish and wildlife because of the strong currents (up to seven knots) that ebb and flood through the channel bringing nutrient-laden water to the area. This nutrient-rich seawater upwells in Scow Bay. Augmenting this attraction to fish and wildlife in the discharge from three canneries in Petersburg. The volume of cannery wastes discharged is insufficient to cause environmental degradation, yet sufficient to increase the attractiveness of the area to fish and wildlife. The natural abundance of nutrients and feed combined with cannery discharges has created one of the best wildlife viewing areas in southeast Alaska directly opposite the City of Petersburg.

Areas designated Sd adjoin the shoreline and extend out 200 feet. The remainder of the parcel is designated Ha, Hv, and Ru.

LCS finds that the use of the subject parcel for the boat haul-out ramp and extension of the existing rock jetty breakwater is consistent with the Unit PT-16 and PT-36 designations and corresponding classifications. Additionally, public access would be improved and expanded with the creation of a boat haul-out ramp and the extension of a rock jetty breakwater, without causing a substantial negative impact on wildlife. Therefore, the use fulfills the requirements of AS 38.05.825(a)(5).

- ii. *Land Classification Order:* The State classified the subject parcel as Waterfront development land, Settlement land, Public recreation land, and Wildlife habitat land under Classification Order SE-00-001, based on the CSSEAP (adopted 2000).
- iii. *Local Planning:* The Petersburg Borough Comprehensive Plan Update (2016) states that the Scow Bay area has a future industrial use of “[e]xpansion of on shore-based fish processing and related marine support services” and the expansion of “warehousing/processing for value added and/or new seafood products.”¹⁰ The plan specifically states that a

¹⁰ The Petersburg Borough Comprehensive Area Plan Update, p. 72.

Preliminary Decision

AS 38.05.825 Tide and Submerged Land Conveyance – ADL 109381

Page 8 of 15

role of the Petersburg Economic Development Council (PEDC) is to “invest in community infrastructure as a catalyst for private sector investment” including “the proposed Scow Bay marine vessel haul out.”¹¹

The Petersburg Borough Waterfront Master Plan (2016) states:

The existing Scow Bay ramp has a slope that is too shallow for launch and recovery by conventional boat trailers. Existing trailer boat ramps in Petersburg Borough range from 7 degrees to 9 degrees. Current small boat launch ramp standards for trailered boats recommend a slope of no less than 12-percent (i.e., 7 degree) gradient for efficient launch and recovery. Therefore, Scow Bay is not presently used for recreational boating.

Approximately 3.5-Acres of the Scow Bay site covering both lots has been leveled and graded. The surface is a combination of pavement and gravel. The Haul-out Ramp needs maintenance and is not suitable for trailer boats. It is also too short for use throughout the tidal cycle. The upland area, west of Mitkof Highway supports the Scow Bay Volunteer Fire Department station and training tower. It also supports an Alaska DOT storage yard and maintenance facility. Conflicting use of the uplands and multiple owners/jurisdictions constrains the efficient development of haul-out facilities at Scow Bay.¹²

- f. Traditional Use Findings: The subject parcel is located within the Petersburg Borough and a traditional use finding is therefore not required per AS 38.05.830 Land Disposal in the Unorganized Borough. However, information on current or traditional use is welcomed and can be given during the public comment period. **See Section VII. Submittal of Public Comments** and *Attachment D: Public Notice* for details on how to comment.
- g. Access, Including Access to and Along Public or Navigable Water:
 - i. *Public Access:* Legal and constructed access to the subject parcel is via Mitkof Hwy, then south and west through ADL 229100 and ADL 107499, both of which been conveyed to the Petersburg Borough. Pursuant to AS 38.05.825, the conveyance of tidelands cannot unreasonably interfere with public access and the municipality must provide reasonable access to public waters and tidelands.
 - ii. *Access to and Along Public or Navigable Waters:* In accordance with AS 38.05.127 Access to Navigable or Public Water, DNR will determine if a water body is navigable or public and establish easements or rights-of-way as necessary to ensure unobstructed access to and along the body of water. Regulations dictating the creation of easements or rights-of-way under this statute include 11 AAC 51.035 Determination of Navigable and Public Water, 11 AAC 51.045 Easements to and Along Navigable and

¹¹ *Id.*, at 145.

¹² The Petersburg Borough Waterfront Master Plan, p, 19.

Preliminary Decision

AS 38.05.825 Tide and Submerged Land Conveyance – ADL 109381

Page 9 of 15

Public Water, and 11 AAC 53.450 Buffer Strips, Reserved Areas, and Public Easements.

The Wrangell Narrows is a navigable body of water. Per AS 38.05.126(b) Navigable and Public Waters, "...the State has full power and control of all of the navigable or public water of the state, both meandered and unmeandered, and the State holds and controls all navigable or public water in trust for the use of the people of the state." This trust is in accordance with the principles of the Public Trust Doctrine, which are included in Article VIII, Section 14 of the Constitution of the State of Alaska and protected in the United States Constitution. It is vested in the title to this land, is not transferable, and the State's title to submerged lands under navigable waters cannot be relinquished by a transfer of the property. In holding with this concept, navigability determinations are made, and access will be reserved per AS 38.05.127 Access To and Along Public and Navigable Water.

- iii. *Easements and Setbacks:* A 50-foot continuous public access easement seaward from the current MHW of public or navigable water bodies shall be reserved to the State in accordance with AS 38.05.127 Access to Navigable or Public Water.

Where appropriate, reservations and restrictions will be depicted on the plat and described in plat notes.

- h. Reservation of Mineral Estate: In accordance with Section 6(i) of the Alaska Statehood Act and AS 38.05.125 Reservation [of Rights to Alaska], the State retains ownership of the mineral estate that may be in or upon the tideland that it sells. This retention is for all minerals, including locatable minerals (such as gold, copper, silver, etc.) and leasable minerals (such as oil, gas, coal, etc.).

The State and its successors reserve the right to enter upon the tideland for the purposes of exploring for, developing, and producing these reserved mineral resources. Access reserved to these retained interests is superior to any and all surface uses. The State may also lease these retained interests to mineral developers or allow mining locations to be staked. However, AS 38.05.130 Damages and Posting of Bond also provides that the land estate owner will be compensated for damages resulting from mineral exploration and development.

- i. Hazardous Materials and Potential Contaminants: There is no known contamination of, or hazardous materials on, the subject parcel.

The applicant is expected to inspect the subject parcel to ascertain the quality and condition of the land. The State 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 for conveyance to the applicant. The State does not assume any liability for the removal of hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances ever be identified.

Preliminary Decision

AS 38.05.825 Tide and Submerged Land Conveyance – ADL 109381

Page 10 of 15

The applicant will be required to submit an affidavit acknowledging the condition and history of the site prior to purchase.

- j. Survey: Upon DNR approval for the conveyance of the parcel, an Alaska Tideland Survey (ATS) performed by an Alaska Registered Land Surveyor under the direction of the DMLW Survey Section will be required at the applicant's expense. The survey will be required before issuing a state tideland patent. There is no requirement under AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities, to appraise the land prior to conveyance.

Preliminary Survey Determination 20245118, dated July 29, 2024, was conducted by the DMLW Survey Section which determined the subject parcel to be unsurveyed.

VI. DMLW and Agency Review

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 PD. The conveyance application documents were distributed to State agencies for review from October 28, 2024, through November 27, 2024. The intent of an agency review is to request comments from agencies that may be affected by a conveyance of tide and submerged land decision. Agencies are given the opportunity to evaluate and comment on the municipality's land request to determine if the State should retain all or a portion of the subject 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 tideland is to be conveyed out of state ownership.

DNR DMLW LCS received brief comments of non-objection from the following agencies:
DNR Division of Oil and Gas, Alaska Department of Transportation and Public Facilities

DNR DMLW LCS response: LCS appreciates your review of the application materials for the subject parcel.

Comment from DNR DMLW Public Access Assertion and Defense (PAAD):
The tide and submerged lands covered by proposed project notated as ADL 109381 were conveyed to the State of Alaska at the date of statehood. This conveyance took place by the operation of the Equal Footing Doctrine, the Submerged Lands Act of 1953 as accepted in the Alaska Statehood Act. Further confirmation of this ownership took place with Quiet Title Act Disclaimer from the USDOJ in Original 128 (546 U.S. 413). There are no valid pre-statehood withdrawals documented within the vicinity of the project. There are no known documented RS 2477 ROW that overlay the proposed project.

DNR DMLW LCS Response: LCS appreciates your review of the application materials for the subject parcel. The provided information has been incorporated into this decision.

Comment from DNR DMLW Surveys:
Surveys has previously provided a Survey Determination for this parcel and determined it is unsurveyed. It must be surveyed for conveyance.

Preliminary Decision

AS 38.05.825 Tide and Submerged Land Conveyance – ADL 109381

Page 11 of 15

DNR DMLW LCS Response: LCS appreciates your review of the application materials for the subject parcel. The requirement to survey the subject parcel has been incorporated into this decision.

Summary of Comments from DNR DMLW RADS:

The proposed conveyance supports the Borough's goal of enhancing maritime infrastructure while aligning with the management intent of the CSSEAP. Based on RADS review of the land records and taking the area plan recommendations into account, the application for a tideland conveyance by the Petersburg Borough, ADL 109381 is a viable application that should move forward. However, careful consideration will be needed to mitigate potential impacts to high-value fish and wildlife resources and ensure continued public access.

DNR DMLW LCS Response: LCS appreciates your review of the application materials and subject parcel. Careful consideration will be given to mitigate potential impacts to high-value fish and wildlife resources and ensure continued public access. Per Section XI of this decision, a 50-foot continuous public access easement seaward from the current MHW of public or navigable water bodies shall be reserved to the State in accordance with AS 38.05.127 Access To Navigable or Public Water. This conveyance will also be made subject to the Public Trust Doctrine.

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

- Alaska Department of Commerce, Community & Economic Development
 - Division of Community & Regional Affairs
- Alaska Department of Environmental Conservation
- Alaska Department of Fish & Game
- Alaska Department of Health
- Alaska Department of Natural Resources
 - Alaska Mental Trust Land Office
 - Division of Parks and Outdoor Recreation
 - Division of Oil and Gas
 - State Pipeline Coordinator's Office
- US Fish and Wildlife

VII. Submittal of Public Comments

See Attachment D: Public Notice for specific dates and conditions.

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

In accordance with AS 38.05.946(a) Hearings, a municipality or corporation entitled to receive notice under AS 38.05.945(c) Notice 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

Preliminary Decision

AS 38.05.825 Tide and Submerged Land Conveyance – ADL 109381

Page 12 of 15

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 PD including any deletions, minor changes, and summary of comments and LCS responses will be issued as a subsequent FFD 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 FFD. Upon approval and issuance of a FFD, 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
4:00 PM, WEDNESDAY, OCTOBER 29TH, 2025.**

VIII. Stipulations

If approved for conveyance, applicable conditions, restrictions, and reservations will be imposed upon the transfer of equitable title when the FFD is effective and on the final conveyance document, including but not limited to the following:

1. As a condition of the conveyance, following the survey of the subject parcel, the Borough must sign an affidavit acknowledging the condition of the land and releasing the State from liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, and for the remediation of the site should such substances ever be identified. This affidavit must be signed prior to issuance of a tideland patent.
2. Administration of state leases and permits in the surface estate, if any, will be transferred to the Borough when the FFD is effective. Applications for state leases or permits in the subject area that have not been adjudicated or issued will be closed.
3. Management authority for the approved subject parcel will be transferred to the Borough when the FFD is effective. Applications for state leases or permits in the subject area that have not been adjudicated or issued will be closed. When approved, the Borough may execute leases and permits prior to the issuance of a state conveyance document in accordance with AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities.
4. All mineral-related permits, licenses, claims, and leases affecting the tidelands proposed for conveyance, if any, will remain under the authority of the State.
5. Notification to the Alaska State Historic Preservation Office in accordance with AS 41.35.070(d) Preservation of historic, prehistoric, and archeological resources threatened by public construction, is required upon discovery of historic, prehistoric, or archaeological sites, locations, remains, or objects.

Preliminary Decision

AS 38.05.825 Tide and Submerged Land Conveyance – ADL 109381

Page 13 of 15

6. A notice to proceed to survey will be issued if no appeals are received, or when appeals are resolved, after the issuance of the FFD. The Borough must hire a surveyor, and the surveyor must apply to DMLW's Survey Section for Survey Instructions. The applicant's survey must be approved by DMLW and the local platting authority, if any, as set forth in the Survey Instructions. Survey costs shall be borne by the Borough.
7. The approved tideland conveyance is subject to the terms and conditions of AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities, including: 1) Grantee may lease the land, but may not sell it; 2) Grantee takes title to the tide and submerged lands subject to the Public Trust Doctrine that may be enforced by the State in a court of competent jurisdiction; 3) The municipality shall be required to ensure that reasonable access to public waters and tidelands is provided; 4) The municipality may not lease land conveyed under this section for shore fisheries, but after conveyance, the land may be leased by the State for shore fisheries under AS 38.05.082 Leases for Shore Fisheries Development if the Commissioner determines that the lease is compatible with the municipality's use of the land; and 5) Title to the land conveyed under this authority reverts to the State upon dissolution of the municipality.
8. The approved tideland conveyance is subject to 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.
9. Pursuant to AS 38.05.125 Reservation, the mineral estate shall not be conveyed.
10. Pursuant to AS 38.05.127 Access To Navigable or Public Water, a 50-foot continuous public access easement seaward from the current MHW of public or navigable water bodies shall be reserved to the State.

IX. Discussion and Alternatives

The following alternatives were considered:

Alternative 1: Convey subject parcel

Approve the proposed conveyance of the 21-acre tide and submerged land parcel to the Borough with management authority to be transferred when the FFD becomes effective. The subject parcel encompasses the area required for construction of a new boat haul-out ramp and extension of the existing rock jetty breakwater at ADL 107499. This alternative meets the intent of AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities to convey tide and submerged land to municipalities where the municipality's interest in obtaining the subject parcel outweighs the public interest in retaining State ownership.

Alternative 2: Retain

LCS will reject and retain the 21-acre tide and submerged land parcel requested by the Borough. This alternative would, in effect, preclude the Borough's ownership of the tidelands considered to be important for their community development and access. This action would be inconsistent with the purpose of AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities and inconsistent with the basis for the disapproval of a tideland conveyance request in that section of the statute. A tideland conveyance request can only be rejected

Preliminary Decision

AS 38.05.825 Tide and Submerged Land Conveyance – ADL 109381

Page 14 of 15

when the State's interest outweighs that of the municipality, and there is no basis for such a determination.

For the aforementioned reasons, Alternative 1 is the preferred alternative.

Recommendation follows.

Preliminary Decision

AS 38.05.825 Tide and Submerged Land Conveyance – ADL 109381

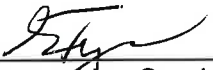
Page 15 of 15

X. Recommendation and Preliminary Decision


This PD for the proposed disposal of State-owned tide and submerged land, described throughout this document and its attachments are consistent with the overall management intent for State-owned land. Alternative 1 is the preferred alternative. Under AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities, no direct economic benefit is realized by the State, but further development of this parcel will serve the needs of the Petersburg Borough. Facilitating community development activities in the Petersburg Borough indirectly provides economic benefit to the State by encouraging settlement and related economic activity. LCS believes that the proposed conveyance complies with the requirements of AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities, as discussed above. Unless public comment indicates that the parcel does not qualify for conveyance under AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities or that the public interest in retaining the parcel clearly outweighs the municipality's interest in retaining the parcel, DNR must convey the parcel subject to the completion of an ATS.

The PD described above, as represented by the preferred alternative, has been reviewed and considered. After review and consideration of the materials in this PD, I find that the recommended action may be in the best interest of the State and that it is hereby approved to proceed to public notice.

After public notice, the subsequent review process may result in changes to the preferred alternative or disapproval of the proposed action altogether. A FFD will address any significant issues or concerns raised during the public review process.


Prepared by: Sarah Tyler
Natural Resource Specialist 2
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

9/29/25
Date of Signature


Approved by: Hannah Uher-Koch
Section Chief
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

9/29/25
Date of Signature



Petersburg Borough - Scow Bay
ADL 109381

Agency Review Vicinity Map

Application for Tideland Conveyance
 Pursuant to AS 38.05.825

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



USGS Quad 1:63,360 Petersburg D-3

For more information contact:

Sarah Tyler

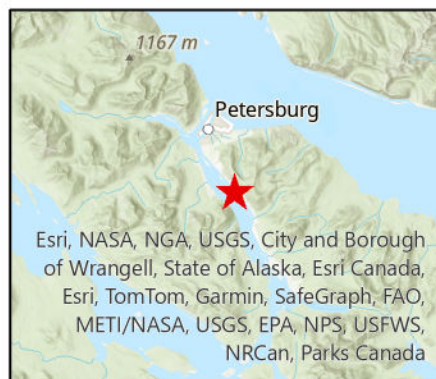
Department of Natural Resources
 Division of Mining, Land and Water
 Land Conveyance Section

Phone: 907-269-8851

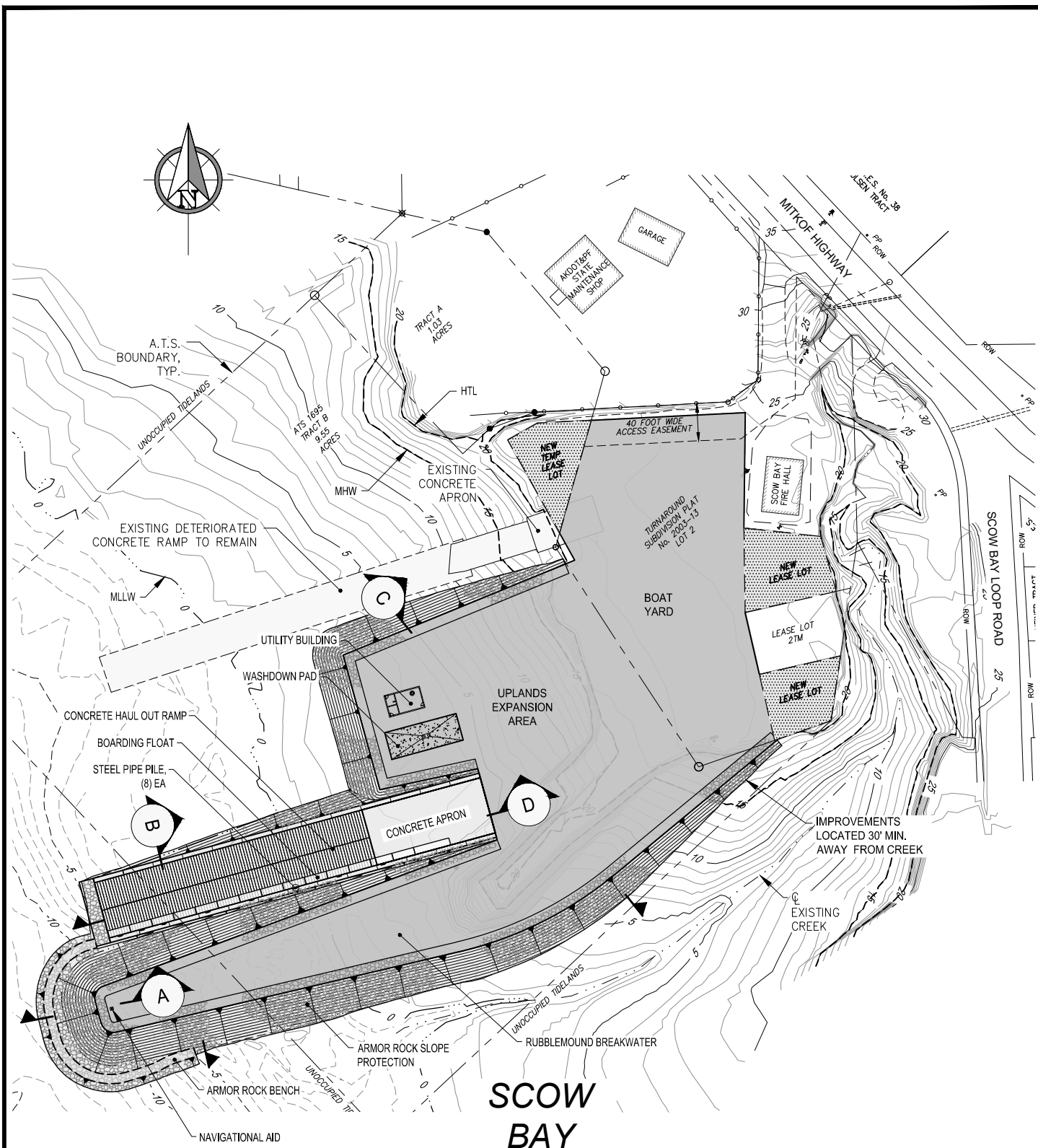
Fax: 907-269-8916

Email: sarah.tyler@alaska.gov

**Sections 4 and 9,
 Township 59 South,
 Range 79 West,
 Copper River Meridian**



SJT 10/23/2024



SITE PLAN

SCALE IN FEET
0 150 300 FT.

SCOW BAY VESSEL HAULOUT

APPLICANT: PETERSBURG BOROUGH

FILE NO.: POA-2010-00163

WATERWAY: WRANGELL NARROWS/SCOW BAY

PROPOSED ACTIVITY: VESSEL HAULOUT FACILITY CONSTRUCTION

SEC. 4 T. 59S R. 79E M COPPER RIVER MERIDIAN

LAT.: 56.7801°N LONG.: 132.9728°W

DATE: MAY 2025

PND#: 162046

SHEET 3 of 8

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

**AFFIDAVIT ACKNOWLEDGING CONDITION OF LANDS AND RELEASING THE STATE FROM
RELATED LIABILITY**

ADL 109381

We, Petersburg Borough, whose address is 12 South Nordic Drive, PO Box 329, Petersburg, Alaska 99833, being first duly sworn under oath, state and declare as follows:

1) We are the fee simple purchaser of state-owned lands that we have heretofore had an agreement with the State of Alaska, Department of Natural Resources (DNR) to develop the state-owned lands for an expansion of Scow Bay marine vessel haul out and work yard. The legal description of the land we are acquiring (hereinafter "the acquired property") is as follows:

That portion of State Tidelands within the S $\frac{1}{2}$ of Protracted Section 4 and the NE $\frac{1}{4}$ of Protracted Section 9, Township 59 South, Range 79 East, Copper River Meridian; located westerly of Tracts A and B of Alaska State Tideland Survey No. 1695, South of Alaska Tideland Survey No. 605, and seaward of: Tract 1 of Hofstad Subdivision, Lot 3A of Reid Family Trust Subdivision, and Lots 1 and 2 of Winther Subdivision; containing approximately 21 acres, more or less.

2) As the longtime occupant of the acquired property, we have been aware of the history and condition of the site.

3) We accept full responsibility for any claim, cause of action, liability, required remedial action, or required or response action arising in connection with any contamination. In the event of any such claim or action we agree to hold the State of Alaska and DNR harmless. Further, we release DNR from any liability arising in connection with any contamination.

4) We affirm that in the event of any future sale, assignment, or other transfer of our ownership interest in the acquired property to another person or entity, we will disclose any potential contamination.

ADL 109381

Affidavit Acknowledging Condition of Land
and Releasing the State from Related Liability

Sworn and Affirmed this ____ day of _____, 2025, in _____, Alaska.

Printed name, signature of signing authority for Petersburg Borough

Date

STATE OF ALASKA)
) ss.
____ Judicial District)

THIS IS TO CERTIFY that on the _____ day of _____, 2025, before me personally appeared _____ known to me to be the person executing this affidavit and acknowledged voluntarily signing the same.

Notary Public in and for the State of Alaska
My Commission Expires: _____

STATE BUSINESS - NO CHARGE

RETURN TO:

**Land Conveyance Section
DNR Division of Mining, Land and Water
550 W, 7th Ave. Suite 640
Anchorage, AK 99501**

ADL 109381

Affidavit Acknowledging Condition of Land
and Releasing the State from Related Liability

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

Attachment D: PUBLIC NOTICE

Requesting Input for Proposed Submerged Land Conveyance - ADL 109381
AS 38.05.035(e), AS 38.05.825

COMMENT PERIOD ENDS 4:00 PM, WEDNESDAY, OCTOBER 29, 2025

The State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS), proposes to convey one parcel of State-owned tide and submerged land to the Petersburg Borough (Borough), pursuant to Alaska Statute (AS) 38.05.825 Conveyance of Tide and Submerged Land to Municipalities. The subject parcel encompasses the area required for a public moorage, an extension of the existing rock jetty breakwater, and a boat haul-out ramp at the north end of Scow Bay and within the Wrangell Narrows, totaling approximately 21 acres, more or less.

Proposed Offering: Approximately 21 acres, final acreage will be determined by completing survey requirements.

To obtain the notice, Preliminary Decision (PD), or instructions on submitting comment, go to <https://dnr.alaska.gov/mlw/landsales/> 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 8:30 AM and 4:00 PM in Anchorage at (907) 269-8400 or Fairbanks at (907) 451-2705 or the Southeast Land Office in Juneau at (907) 465-3400 or TTY: 711 for Alaska Relay or 1-800-770-8973 or go to <https://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, Wednesday, October 22, 2025.

Pursuant to AS 38.05.945 Notice, the public is invited to submit comments on the Preliminary Decision. **The deadline for public comment is 4:00 PM, WEDNESDAY, OCTOBER 29, 2025.** Only persons from whom DNR DMLW LCS receives timely, written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision (FFD). Written comment may be received by fax, email, or postal mail. To submit comments or for direct inquiries, contact Melinda Reynolds by mail at 550 West 7th Ave, Suite 640, Anchorage, AK 99501 or by fax at (907) 269-8916 or by email at sarah.tyler@alaska.gov. If you have questions, call Sarah Tyler at (907) 269-8851.

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.