

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 108982, 108983, and 108984

PUBLIC COMMENT PERIOD ENDS 4:30 PM, FRIDAY, MARCH 3, 2023

I. PROPOSED ACTION

Preliminary Decision: Petersburg Borough Municipal Land Entitlement Selections – ADL 108982, 108983, and 108984

Attachment A: Vicinity Map

Attachment B: Fanshaw Bay

Attachment C: Prolewy Point

Attachment D: Hood Point

Attachment E: SE Mitkof

Attachment F: Sumner Strait

Attachment G: 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, postpone in part, and reject in part lands selected by Petersburg Borough (PB) 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: Vicinity Map* for a depiction of the project area.

PB selected one parcel in Region 1 - Sumdum-Stephens Passage and five parcels in Region 3 - Petersburg as identified in the Central/Southern Southeast Area Plan¹ (CSSEAP). Approximately 3,283 acres will be adjudicated in this decision.

LCS proposes to convey approximately 2,737 acres of state-owned vacant, unappropriated, unreserved (VUU²) general grant land. Regarding these parcels, LCS has determined that no overriding state interests merit retaining these selections in state ownership.

LCS proposes to reject the conveyance of approximately 523 acres of borough selections because the land is ineligible for conveyance or DNR has otherwise determined it is not in the State's best interest to convey the land out of state ownership.

LCS proposes to postpone the conveyance of approximately 23 acres of borough selections. Regarding these parcels, they will be addressed along with the land on the west side of Woodpecker Cove postponed for conveyance in the DNR Commissioner's Decision on Appeal No. 21-022 dated December 20, 2022, in a future decision.

¹ The *Central/Southern Southeast Area Plan* (CSSEAP) 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*).

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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 G: 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.

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*, and *11 AAC 51 Public Easements*.

III. ADMINISTRATIVE RECORD

The administrative record for this PD consists of case files Alaska Division of Lands (ADL) 108982, 108983, and 108984. Also incorporated by reference are:

- Central/Southern Southeast Area Plan (CSSEAP) adopted in November 2000 and associated land classification files;
- 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.

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 a determination of whether it is found to be appropriate to convey the subject parcels to Petersburg Borough. This decision includes a review of third-party interests, stipulations necessary to effectuate this decision, and an evaluation of whether the public interest in retaining state ownership of the land outweighs PB'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 PB's municipal entitlement land selections meet the requirements under *AS 29.65.070(b) Selection and Conveyance Procedure* and whether it is appropriate to allow PB 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 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 forests. 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.

Borough/Municipality: Petersburg Borough
Meridian: Copper River (C)
Regional Corporation: Sealaska Corporation

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Federally Recognized Tribes: Central Council of the Tlingit and Haida Indian Tribes of Alaska, Petersburg Indian Association, Organized Village of Kake, Wrangell Cooperative Association

Village Corporation: Kake Tribal Corporation

USGS Map Coverage: Sumdum Quadrangle (1:250,000)

Fanshaw Bay Sumdum A-5, B-5 (1:63,360)
 Petersburg Quadrangle (1:250,000)
 Prolewy Point Petersburg D-3 (1:63,360)
 Hood Point Petersburg C-4 (1:63,360)
 SE Mitkof Petersburg C-2 (1:63,360)
 Sumner Strait Petersburg B-3, C-3 (1:63,360)

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

Table 1 below identifies PB land selections adjudicated in this decision by location/map name, Meridian (M), Township (T), Range (R), Section (S), title report number and date, 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 (PA) or Tentative Approval (TA) from the U.S. Department of Interior, Bureau of Land Management (BLM). The State will only convey the land estate on lands approved for conveyance to PB. AS 38.05.125 requires the State to retain the mineral estate. Pursuant to AS 29.65.070(b), the State may not issue patent to a municipality until the land has been first patented to the State.

Table 1

| Map Name ADL No. | MTRS | Title Report No. | State Case File | Title/ Date | Third-Party Interests |
|-------------------------------|---|--|-----------------------|-------------------------------|--|
| Fanshaw Bay (ADL 108984) | C053S075E16 C053S075E17 C053S075E20 C053S075E21 C053S075E28 C053S075E29 C053S075E32 C053S075E33 C054S075E04 C054S075E05 C054S075E09 | RPT – 22530, current as of 8/5/2022 | NFCG 253 | PA 50-2003-0066 12/19/2002 | None identified |
| Prolewy Point (ADL 108983) | C058S079E10 C058S079E15 | RPT – 22535, current as of 10/5/2022 | NFCG 298 | TA 0019970002 10/3/1996 | A-061040 ROW (50') Petersburg Creek Hwy under 44 LD 513 (Sec. 15) |
| Hood Point (ADL 108984) | C061S079E02 | RPT – 22532, current as of 8/30/2022 | NFCG 109 | PA 50-82-0093 7/29/1982 | None identified |
| SE Mitkof (ADL 108982) | C061S082E12 C061S082E13 C061S082E22 C061S082E23 C061S082E27 | RPT – 22533, current as of 9/29/2022 | NFCG 110 | PA 50-2015-0074 4/14/2015 | Mitkof Highway (Forest Hwy 7), 132' |

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| Map Name ADL No. | MTRS | Title Report No. | State Case File | Title/ Date | Third-Party Interests |
|-------------------------------|--|--|-----------------------|------------------------------|---|
| Sumner Strait (ADL 108982) | C062S081E08 C062S081E09 C062S081E10 C062S081E16 C062S081E17 C062S081E18 | RPT – 22534, current as of 10/7/2022 | NFCG 290 | PA 50-2003-0454 8/14/2003 | Woodpecker Cove Road (FDR 6245), 66' (Sections 8, 9, and 10) |

VI. PRELIMINARY DECISION

A. Background

In January 2013, Petersburg Borough was certified as an incorporated Non-Unified Home Rule Borough, which dissolved the City of Petersburg as an entity eligible to receive grant lands. Subsequently, DNR certified an entitlement of 1,896 acres of Vacant, Unappropriated, Unreserved (VUU) land in accordance with *AS 29.65.030 Determination of Entitlement for Newly Incorporated Municipalities*. This VUU calculation included acreage from the Southeast State Forest. However, per *AS 41.17.500(f) Southeast State Forest*, state forest lands may be used to calculate entitlement but cannot be selected for municipal lands. The City of Petersburg land that was previously conveyed (458 acres) is accounted for as lands already conveyed, leaving an entitlement of 1,438 acres. However, the 2013 DNR-certified municipal entitlement was nullified in 2017 when the Alaska Legislature granted PB a larger entitlement 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 approved the conveyance of approximately 550 acres. This preliminary decision addresses a selection received by DMLW in 2018.

B. Planning, Classification, and Mineral Orders

1. Planning

The land selections are separated geographically into two management regions, Region 1 – Sumdum-Stephens Passage and Region 3 - Petersburg. The management intent and plan designation for each management unit are described in the CSSEAP. 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.*). *Table 2* below identifies the land use classification for each selection. PB’s land selections fall within the planning boundary of the CSSEAP and are governed by the management intent and classifications found in the plan.

2. Land Use Classification

The land selections proposed for conveyance in this decision are classified as Resource management land, Public recreation land, or Settlement land. All three are conveyable classifications as municipal entitlement general grant land under *AS 29.65* unless an overriding state interest exists as stated in the management intent. *Table 2* below shows the land use classifications from the CSSEAP for the land selections adjudicated in this decision.

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Table 2

| Map Name ADL No. | MTRS | Approx. Acres | Unit | Classification |
|-------------------------------|---|------------------|------|---|
| Fanshaw Bay (ADL 108984) | C053S075E16 C053S075E17 C053S075E20 C053S075E21 C053S075E28 C053S075E29 C053S075E33 | 1189 | S-04 | Resource management land, Public recreation land |
| | C053S075E32 | 121 | S-05 | Public recreation land |
| | C054S075E04 C054S075E05 | 414 | S-04 | Resource management land, Public recreation land |
| | C054S075E04 C054S075E09 | 85 | S-05 | Public recreation land |
| Prolewy Point (ADL 108983) | C058S079E10 C058S079E15 | 513 | P-02 | Public recreation land |
| Hood Point (ADL 108984) | C061S079E02 | 22 | P-31 | Settlement land, Public recreation land |
| SE Mitkof (ADL 108982) | C061S082E12 C061S082E13 C061S082E22 C061S082E23 C061S082E27 | 97 | P-23 | Resource management land |
| Sumner Strait (ADL 108982) | C062S081E08 C062S081E09 C062S081E10 C062S081E16 C062S081E17 C062S081E18 | 871 | P-27 | Resource management land |

3. Mineral Orders

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

Mineral Closing Order (MCO) 481 and Mineral Order (MO) 1017 closed mineral entry to much of the Fanshaw Bay area, and MCO 188 closed entry around Beecher Pass Marine Park.

MO 1045 closed to mineral entry several parcels at Fanshaw Bay, Hood Point, and SE Mitkof. MO 1045 was part of the 2005 University of Alaska land grant, which was subsequently invalidated by an Alaska Supreme Court decision³. On February 7, 2012, DNR issued MO 1118, which reopened some of the parcels that were closed under MO 1045. Parcels at Fanshaw Bay, Hood Point, and SE Mitkof were reopened to mineral entry under MO 1118.

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

No other known mineral orders affect PB's selections within these ADLs.

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. PB's municipal entitlement land selections in this decision are located within PB's 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*.

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

The Mitkof Highway (Forest Highway 7) is the primary road on Mitkof Island. It is one segment of the Alaska Highway system for AK-7, which also includes the Alaska Marine Highway. There are many secondary roads, some of which were previously forest development roads (FDR). The Blind Slough and Sumner Strait parcels on the south end of Mitkof Island can be accessed by the Mitkof Highway. Hood Point, Prolewy Point, and Fanshaw Bay parcels can be accessed by floatplane or boat.

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, the easement will be 50 feet wide measured from the section line. If a section line runs through a selection being conveyed, the easement will be 50 feet wide measured on each side of the section line, for a total width of 100 feet.

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

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

The FDRs, which allow access to much of Mitkof Island, are reserved to the U.S. (AA45079) with a 66-foot ROW. The Mitkof Highway (Forest Highway 7) has a ROW of 132 feet. There are no RS 2477 rights-of-way within 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 PB. 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, fieldwork 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 fieldwork is determined to be accurate, then the survey results will supersede the recommendation in this decision.

Navigable Waters: Pursuant to *11 AAC 51.035 Determination of Navigable or Public Water*, a water body is navigable if it is at least 50 acres in size or a waterway at least 50 feet wide from OHWM to OHWM. A water body will also be considered navigable if it is found navigable for a useful public purpose in accordance with *AS 38.05.965 Definitions*, otherwise, it will be considered public water in accordance with *11 AAC 51.035*. Additionally, ownership of land adjacent to navigable water does not create any right of title to land below the OHWM of the navigable water.

All tidal waters are considered navigable under the Submerged Lands Act (67 Stat 29, PL 31, 5/22/1953). The MHWL 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 ten but less than 50 acres in size or at least ten 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 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 PB. 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 MHWL 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 MHWL 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 water bodies, and the 'to' easement is intended to provide access to the 'along' easements.

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

Table 3 below indicates those waterbodies considered navigable or public waters affected by this requirement (see column "Public Access"). These public access easements will be reserved as a 'subject to' in this decision on those lands approved for conveyance to the Borough.

Navigable Waters:

The waterbodies may or may not be anadromous. No navigable waters or the beds (underlying land) of a navigable waterbody are conveyed in a decision for municipal entitlement. The exposed sand or gravel bars within and not above the MHWL are part of the waterbody bed. Only those lands determined to be uplands above the MHWL are intended to be conveyed.

The waterbodies considered navigable in this decision are all marine and include Stephens Passage, Cleveland Passage, Steamboat Bay, Fanshaw Bay, Frederick Sound, Duncan

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Canal, Beecher Pass, Dry Strait, Sumner Strait, and Woodpecker Cove. All marine shores will require a 50-foot public access easement along the MHWM.

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. Those waterbodies determined to not meet the minimum public water standards after a survey will not require the public access easement.

Table 3

| Map Name | MTRS | Waterbody Name | Anadromous Water Cat. # | Public Access Easement (to & along) |
|-------------------------------|-------------|----------------------|-------------------------|-------------------------------------|
| Fanshaw Bay (ADL 108984) | C053S075E20 | Unnamed creek | None | On the bed and 50 feet upland |
| | C053S075E21 | Unnamed creeks | None | |
| | C053S075E33 | Unnamed creeks | None | |
| | C054S075E04 | Unnamed creek | 110-31-10100 | |
| | C054S075E09 | Unnamed creek | None | |
| Prolewy Point (ADL 108983) | C058S079E10 | Unnamed creek | None | On the bed and 50 feet upland |
| | C058S079E15 | Unnamed creeks | None | |
| SE Mitkof (ADL 108982) | C061S081E12 | Unnamed creek | 108-40-10660 | On the bed and 50 feet upland |
| | C061S081E22 | Unnamed creek | 108-40-10630 | |
| | C061S081E22 | Unnamed creek | 108-40-10632 | |
| | C061S081E22 | Unnamed creeks | None | |
| | C061S081E23 | Unnamed creek | 108-40-10648 | |
| Sumner Strait (ADL 108982) | C062S081E08 | Unnamed creek | 108-30-10300 | On the bed and 50 feet upland |
| | C062S081E08 | Unnamed creek | 108-03-10340 | |
| | C062S081E08 | Unnamed creek | None | |
| | C062S081E09 | Unnamed creek | 108-30-10400 | |
| | C062S081E09 | Unnamed creek | None | |
| | C062S081E09 | Station Island Creek | 108-30-10400 | |
| | C062S081E10 | Station Island Creek | 108-30-10400 | |
| | C062S081E10 | Unnamed creek | 108-30-10400-2004 | |
| | C062S081E10 | Unnamed creek | 108-30-10400-2004-3001 | |
| | C062S081E10 | Unnamed creek | 108-30-10400-2010 | |
| | C062S081E16 | Unnamed creek | 108-30-10340 | |
| | C062S081E17 | Unnamed creek | 108-30-10300 | |
| | C062S081E17 | Unnamed creek | 108-30-10340 | |
| | C062S081E18 | Unnamed creek | 108-30-10300 | |

E. Reservation of Mineral Estate

A VUU general grant land conveyance 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

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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 a review by the DNR DMLW Statewide Abatement of Impaired Lands (SAIL) Section and the Alaska Department of Environmental Conservation's (DEC) Contaminated Site Database, no contaminated sites were found among the selected parcels. See the details of SAIL's and DEC's comments in **Subsection M. DMLW and Agency Review** below.

PB is expected to inspect these selections and familiarize itself with regard 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 the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor any liability for the remediation of the site should such substances ever be identified.

G. Survey

A state-approved survey is required prior to the issuance of a conveyance document. If no approved survey exists, then one must be performed by an Alaska Registered Land Surveyor under the direction of the DNR DMLW Survey Section. PB is responsible for the expense of any survey. PB may request a survey determination at any time subsequent to the FFD. There is no requirement under *AS 29.65.070* to appraise the land prior to conveyance.

H. Conditional Leases and Sales

PB will receive management authority and equitable title to all land approved for conveyance in this decision once the FFD is effective. This will allow PB 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 PB.

I. Unauthorized Use

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

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

J. Disposition of Leases, Permits, and Applications

Administration of any active leases, permits, and easements for the surface estate issued by the State on land to be conveyed will be transferred to PB when the FFD becomes effective unless such authorizations are specifically excluded from the conveyance. Any pending applications not 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. There are known heritage sites within the Fanshaw Bay area. At this point, no historic cultural resources have been found in the other selected areas.

However, it should be noted that only a very small portion of the State has been surveyed for cultural resources. Therefore, the possibility remains that previously unidentified cultural resources may be located within the selected lands. While the conveyance of these parcels will not directly affect cultural resources, future projects that PB may propose on selected lands could affect unidentified cultural resources. Should any cultural resources be encountered, PB

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). A review of PB's land selections proposed for conveyance in this decision indicates that the selections are consistent with this statute.

M. 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. Agency review was conducted between February 11, 2020, through March 6, 2020, and July 2, 2021, through July 28, 2021. 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.

Comments from DNR Division of Forestry and Fire Protection (DOF&FP), Southeast Area: Feb 2020 AR:

DOF has concerns with regards to Sec.18 on Sumner Strait map. Although the proposed disposal in Sec. 18 is not specifically part of the Woodpecker Cove Log Transfer Facility, DOF recommends retaining the eastern shore of Woodpecker Cove (those lands within Sec. 18) as a buffer for the Woodpecker sort yard and log transfer facility (LTF) operation. LTFs are industrial use and generally not compatible with settlement or recreation activity due to logistical requirements, as well as noise and safety issues. Transferring the adjacent land out of state ownership is a risk [of] its practical long-term use.

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

Comments from DNR Division of Forestry and Fire Protection (DOF&FP), Southeast Area: July 2021 AR:

The DOF has the same concerns about conveyances around Woodpecker Cove (Lot 5 is shown in your Sumner Strait map) as we have stated previously. Any development in the tidelands of Woodpecker Cove will negatively impact the ability to use this small but very valuable log transfer facility. I'm attaching the information we provided earlier, as our comments have not changed. Again, we appreciate your decision to retain in state ownership part of Lot 3, Lot 2, and Lot 1 around Tract 37 (the LTF), but unless the State also retains Lot 5, or limits the development there to the uplands, the LTF will not be protected for future use. The LTF now enables resource development on both State and USFS forest lands. Coastal development is not a compatible use with the LTF, as detailed in the attached packet, and we request that the state retain the coastline. A road along the coast would not impact the LTF, and could provide access to upland parcels, but allowing construction of docks in the water would be a hazard to the barges in the cove as well as to landowners.

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DNR DMLW LCS Response to DOF&FP: LCS understands the importance of the Log Transfer Facility and its association with the State Forest management practices. LCS will postpone adjudication of the land in Section 18 (Lots 5, 6, and 7) and address these lots along with the land on the west side of Woodpecker Cove postponed for conveyance in the DNR Commissioner's Decision on Appeal 21-022 dated December 20, 2022. This additional time to research the importance of Woodpecker Cove to DOF&PF and PB will aid in LCS's decision process.

Comments from the Alaska Department of Environmental Conservation (DEC): Feb 2020 AR: DEC has found no known contaminated sites on or adjacent to the parcels of interest per their database.

DNR DMLW LCS Response to DEC: LCS appreciates your review.

Comments from Alaska Department of Fish and Game (ADF&G): Feb 2020 AR:

The Alaska Department of Fish and Game (ADF&G) has reviewed the municipal entitlement land selection preferences submitted to the Department of Natural Resources by the Petersburg Borough pursuant to AS 29.65.010. The lands selected are on state lands managed by guidelines and policies established by the Central Southern Southeast Area Plan (CSSEAP, adopted 2000). The lands selected consist of approximately 3,658 acres. All lands have classifications that are deemed conveyable to the Borough.

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

Generally, ADF&G recommends the retention of state lands associated with all anadromous and high-value resident fish waterbodies. Public access easements to and along all coastlines should be reserved. Additionally, public access easements should be reserved for any existing trails and section lines, which may be important for public access for fishing and hunting on adjacent public uplands, including within the Tongass National Forest. Specific recommendations for each unit are below.

Prolewy Point, Unit P-02: This 594-acre selection is located north of the town of Petersburg, across Wrangell Narrows upland of Frederick Sound within Sections 10 and 15, Township 58 South, Range 79 East, Copper River Meridian. According to the CSSEAP, Unit P-02 is designated as Undeveloped Public Recreation and the management intent states that it *"is to be retained by the state and managed to preserve its viewshed and habitat values"*.

- ADF&G concurs with the recommendations of the CSSEAP for retaining Unit P-02 in state ownership.
- If any land within P-02 is to be conveyed to the borough, ADF&G requests that public access easements are reserved, including:
 - o 100 feet upland of mean high water or Frederick Sound

SE Mitkof Island, Unit P-23: This 67-acre selection consists of three separate parcels located between the Mitkof Highway and Sumner Strait within Sections 12, 13, 22, 23 and 27, Township 61 South, Range 82 East, Copper River Meridian. The CSSEAP designated Unit P-23 as General Use. This selection is only a fraction of the total 1,290 acres of Unit P-23, which predominately consists of uplands landward from the Mitkof Highway. However, the management intent from the CSSEAP states that land between the highway and the coast is to be managed for public access and recreation. The proposed selections contain the following waterbodies cataloged in ADF&G's Anadromous Waters Catalog, which provide important

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rearing habitat for coho salmon: AWC # 108-40-10660; AWC # 108-40-10648; AWC # 108-40-10632; AWC # 108-40-10630.

- For the above listed waterbodies, ADF&G requests the retention in state ownership of the beds as well as buffers at least 100 feet wide upland of ordinary high water.
- ADF&G requests the reservation of public access easements to and along all public water bodies, including the coast pursuant to AS 38.05.127.

Sumner Strait, Unit P-27: This 845-acre selection is located on southwest Mitkof Island within Sections 8, 9, 10, 16, 17 and 18, Township 62 South, Range 81 South, Copper River Meridian. The portion of Unit P-27 that has been selected lies between Woodpecker Cove Road and Sumner Strait. The CSSEAP designated this portion of Unit P-27 as Undeveloped Public Recreation. The proposed selections contain the following waterbodies cataloged in ADF&G's Anadromous Waters Catalog, which provide important rearing habitat for coho salmon and cutthroat trout: AWC # 108-30-10400; AWC # 108-30-10400-2010; AWC # 108-30-10340; AWC # 108-30-10300. Additionally, there is a wetland complex and stream approximately 2,400 feet east of the stream cataloged as AWC # 108-30-10340. While not cataloged, there is potential that this stream and wetland provide habitat for anadromous fishes.

- For the above listed waterbodies, ADF&G requests the retention in state ownership of the beds as well as buffers at least 100 feet wide upland of ordinary high water.
- Additionally, ADF&G requests buffers of retained land along the coast at the mouths of each of these waterbodies.
- ADF&G requests the reservation of public access easements to and along all public water bodies, including the coast, pursuant to AS 38.05.127. Specifically, access to Woodpecker Cove was identified as a priority in the CSSEAP.

Hood Point, Unit P-31: This 22-acre selection is located at the southern end of the Lindenberg Peninsula, west of Keene Channel within Section 2, Township 61 South, Range 79 East, Copper River Meridian. The land selected is identified as Tract E of ASLS 81-9. The CSSEAP designated the western portion of Tract E as Disposable Interest (Settlement), while the eastern portion, adjacent to Beecher Pass State Marine Park was designated as Undeveloped Public Recreation and was recommended for retention in state ownership. Offshore areas are important habitat for waterfowl and are used for harvest of shellfish and salmon requiring the preservation of public access.

- ADF&G concurs with the recommendation in the CSSEAP to retain the portion of Tract E adjacent to Beecher Pass State Marine Park.
- ADF&G requests the reservation of public access easements to and along all public water bodies, including the coast pursuant to AS 38.05.127.

Fanshaw Bay, Units S-04 and S-05: These selections, totaling 1,810 acres are located along uplands between Mount Fanshaw and Cleveland Passage, Foot Island and the southern portion of Whitney Island in Fanshaw Bay within Sections 16, 17, 20, 21, 28, 29, 32 and 33, Township 53 South, Range 75 East and Sections 4, 5 and 9, Township 54 South, Range 75 East, Copper River Meridian.

The CSSEAP, designated the majority Unit S-04 as General Use with the northern portions adjacent to Steamboat Bay designated as Undeveloped Public Recreation. The management intent for the northern portion include protection of habitat and recreation. Offshore areas provide important habitat for waterfowl, shorebirds, marine mammals, herring, salmon and shellfish. Coastal areas are important for commercial, sport and subsistence harvest of marine resources as well as access to uplands for moose and black bear hunters. The southern portion of this selection contains an unnamed stream cataloged in ADF&G's Anadromous

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Waters Catalog, AWC # 110-31-10100, which provides important habitat for coho and pink salmon and Dolly Varden.

- For the above listed streams, ADF&G requests the retention in state ownership of the bed as well as buffers at least 100 feet wide upland of ordinary high water.
- ADF&G recommends the retention lands surrounding Steamboat Bay within Sections 16, 21 and 20, T53S, R75E, CRM.
- ADF&G requests the reservation of public access easements to and along all public water bodies, including the coast pursuant to AS 38.05.127.

The CSSEAP, designated Unit S-05 as Undeveloped Public Recreation with a management intent including habitat protection and public access. Offshore areas provide important habitat for waterfowl, shorebirds, marine mammals, herring, salmon and shellfish. Coastal areas are important for commercial, sport and subsistence harvest of marine resources as well as access to uplands for moose and black bear hunters.

- ADF&G requests the reservation of public access easements to and along all public water including the coast pursuant to AS 38.05.127.

Comments from Alaska Department of Fish and Game (ADF&G): July 2021 AR:

The Alaska Department of Fish and Game (ADF&G) has reviewed the municipal entitlement land selection preferences submitted to the Department of Natural Resources by the Petersburg Borough pursuant to AS 29.65.010, serialized as ADL 108982, 108983, and 108984. The current review is for selections of five parcels ranging from 22 to 1,810 acres totaling 3,338 acres. ADF&G had previously reviewed and commented on these selections during an Agency Review in March 2020. These previous comments are attached for reference.

The only additional comments from ADF&G on this second review involve the Prolewy Point Unit. Based on slope, topography, and channel type, best available information from ADF&G Habitat Section Biologists predicts that there is a high likelihood that there are several more streams supporting anadromous and/or resident fish within the selection area. In particular, the stream depicted within Section 15 in the attached map is modeled as high probability anadromous fish habitat. Presence of anadromous or resident fish would need to be confirmed with field surveys. ADF&G does not have any plans to perform fish surveys in the near future, however, prior to conveyance, the location of any streams should be definitively identified so that 50' easements upland of ordinary high water pursuant to AS 38.05.127 can be applied.

Thank you for the opportunity to review and comment on these municipal entitlement selections. Please contact me with any questions regarding these comments. Additionally, ADF&G requests a copy of the Preliminary Decision documents.

DNR DMLW LCS Response to ADF&G: In accordance with AS 38.05.127, a 50-foot public access easement will be imposed along the shores of all navigable and public waters and anadromous streams. Per AS 29.65.130(6), conveyance of state land to municipalities are made "without reservation or condition except as may be required by law." Reservations required by law include section line easements and 'to and along' easements.

Prolewy Point: Per the CSSEAP, the State will retain Unit P-02 to manage and maintain watershed and habitat values.

SE Mitkof: DNR can only impose a 50-foot public access easement along the public streams and creeks per AS 38.05.127. The beds of these streams will be conveyed to PB unless the survey finds the streams to be navigable, then the beds will be retained.

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Sumner Strait: DNR can only impose a 50-foot public access easement along the public streams and creeks per AS 38.05.127. The beds of these streams will be conveyed to PB unless the survey finds the streams to be navigable, then the beds will be retained.

Hood Point: The eastern portion of Tract E that is designated Public Recreation – dispersed and will be retained by the State per the CSSEAP. This will provide a buffer to Beecher State Marine Park.

Fanshaw Bay: 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.

Comments from Department of Transportation & Public Facilities (DOT&PF) Feb 2020 AR:

DOT&PF has concerns with land within ADL 108983, specifically Prolewy Point (Unit P-02). It has been brought forward that DOT SCR [Southcoast Region] has considered a future road to connect the current Kake Access project to Petersburg. There are existing road sections within the proposed corridor and a project to connect them and extend the road to Frederick Sound is slated for prospective development. The current project, Kake Access, ends at 12 Mile Creek. While it is not currently in the State Transportation Improvement Plan, DOT retains the right to continue its development course.

Most of this corridor crosses over US Forest Service land which came about by Section 4407 of Public Law 109-59. Section 4407 grants DOT&PF an easement of 300 feet for highway and utility planning for establishment of the road from Kake to Petersburg. The current land selection abuts the easement.

To protect the remaining corridor for potential development of the road, and aligning natural road continuity with Section 4407; DOT&PF would want a 300 foot ROW reservation through the extent of the conveyance.

SCR is not opposed to permitting transverse access as appropriate.

Comments from Department of Transportation & Public Facilities (DOT&PF) July 2021 AR:

Thank you for the opportunity to review the proposal. The Alaska Department of Transportation & Public Facilities (DOT&PF) offers the following additional comments:

ADL (108983)

Prolewy Point (Unit P-02) DOT&PF Southcoast Region has considered a future road to connect the current Kake Access project to Petersburg. There are existing road sections within the proposed corridor and a project to connect them and extend the road to Frederick Sound is slated for prospective development. The current project, Kake Access, ends at 12-Mile Creek. While it is not currently in the State Transportation Improvement Plan (STIP), DOT&PF retains the right to continue its development course.

Most of this corridor crosses over US Forest Service (USFS) land, which came about by Section 4407 of Public Law 109-59. DOT&PF holds a 300-foot highway and utility right of way (ROW) for establishment of the road from Kake to Petersburg, which must be preserved. The current land selection abuts the Easement.

To protect the remaining corridor for potential development of the road and aligning natural road continuity with Section 4407, the 300-foot ROW reservation should be reflected through the extent of the conveyance. SCR is not opposed to permitting transverse access as appropriate and as established collaboratively with DOT&PF. Four documents are attached for reference (as well as the original ADL documents).

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- 1) Prolewy Pt Proposed New Rd
- 2) Section 4407 Easement Kake-Petersburg Rd
- 3) Map 92337
- 4) Kake-Petersburg D1 Easement- Amended 20200123

Prior comments reiterated below:

ADL 108982

- Any future access road or driveway into Mitkof Highway requires a permit from DOT&PF.
- The SE Mitkof Hwy ROW is typically 66 feet from center line with 134-foot setbacks, but the road is allowed to meander through the overall ROW width. Mitkof Hwy is not always centered in the ROW so due diligence must be made prior to any development near the highway.
- Parking cars or storing items, equipment, or vehicles in the clear zone (fog line and beyond ~15 feet) is not permitted.

ADL 108984

- No objection

Please ensure consideration of conveyances and authorizations reflect reviews of the STIP. For this project, please coordinate with DOT&PF's Southcoast Region ROW Group in Juneau as this proposal progresses.

DNR DMLW LCS Response to DOT&PF: LCS appreciates your review. Per the CSSEAP, the State will retain Unit P-02, Prolewy Point.

Comments from DOT&PF, Southcoast Region (SCR) Right of Way (ROW): Feb 2020 AR:
SCR ROW has no objection to the proposed ADL's 108982, 108983, 108984. However, they included items of note for the land within ADL 108982:

- Any future access road or driveway into Mitkof Highway would need to be permitted through SCR ROW.
- The SE Mitkof Hwy ROW is typically 66 feet from center line with 134 feet setbacks, but the road is allowed to meander through the ROW.
- The DOT's Mitkof Hwy is not always centered in the ROW, so due diligence must be made prior to any development near the highway.
- Parking cars in the clear zone (fog line and beyond ~15 feet) is not permitted.

DNR DMLW LCS Response to DOT&PF, SCR ROW: LCS appreciates your review. The Mitkof Highway and its ROW are reserved to the State, and PB will need to coordinate with DOT&PF-SCR prior to any development in or near the ROW.

Comments from DNR Division of Parks and Outdoor Recreation (DPOR), Southeast Region Feb 2020 AR:

DPOR, SE has concerns with the borough's intended use and/ zoning plans for the Hood Point parcel (Plan Unit P-31). This parcel is immediately adjacent to the main portion of Beecher Pass State Marine Park. Parcel P-31 is currently a state-owned buffer between the Beecher Pass SMP and a nearby group of private parcels to the northwest and is also directly at the mouth of an estuary area within the SMP. We would prefer P-31 to stay as a natural undeveloped area to have a management emphasis for recreation and environmental conservation purposes, and limit the encroachment of development toward the SMP. If the borough's intentions for it would not guarantee our above preference, we would wish to have Parcel P-31 retained by the state.

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Comments from DPOR - July 2021 AR:

As we mentioned in the previous review, The Division of Parks and Outdoor Recreation has a concern over the Hood Point 22-acre parcel(s) – C61S79E, section 02, unit P-31, as these are immediately adjacent to the Beecher Pass State Marine Park (SMP) and the mouth of the estuary. We believe it is important to retain the DNR/DMLW land surrounding the park to maintain a natural buffer and additional recreational zone between the SMP and the nearby private parcels. We consider it imperative to the integrity of this SMP for the state to continue ownership of the Hood Point area property.

DNR DMLW LCS Response to DPOR, SE Region: LCS appreciates your review and understands the preference for the Beecher Pass State Marine Park to have a buffer from settlement development. The eastward portion of Tract E is designated Public Recreation - Dispersed, and per the CSSEAP, it is to be retained by the State. Refer to CSSEAP pages 3-122 for a detailed map of the area. This approximately 10-acre portion should provide the buffer that DPOR requires. The rest of Tract E is designated as Settlement and therefore qualifies as conveyable land.

Comments from DNR DMLW RADS - July 2021 AR:

Thank you for the opportunity to review and comment on the proposed municipal entitlement land conveyance to Petersburg Borough. The Resource Assessment & Development Section (RADS) has reviewed the available data, satellite imagery, and the applicable regional land use plan – Central/Southern Southeast Area Plan (CSSAP), and provides the following comments.

Background & Discussion:

The proposed state land conveyance, if approved, would partially fulfill Petersburg Borough's municipal land entitlement as provided under AS 29.65.010(a)(16). Municipal selections under consideration are identified below, with RADS comments for each selection. The plan designations and land classifications for each parcel as presented in the agency review materials appear to be accurate. Except where noted below, these parcels appear to be appropriate for conveyance under the municipal entitlement program, as defined at AS 29.65.130(10)(C).

Prolewy Point, CSSAP Unit P-02. Management intent for this unit specifies that this parcel is to be retained in state ownership and managed to preserve its viewshed and habitat values.
SE Mitkof Island, CSSAP Unit P-23. The area between the road (FH 7) and the coast where these parcels are located is designated for recreational and tourism use. Management intent for the unit specifies that access to and along the beach front should be maintained along FH7 for recreational purposes. A number of campsites used by hunters are located along the south Mitkof Highway which runs along the shoreline in this unit.

Sumner Strait, CSSAP Unit P-27. The area between Woodpecker Road and the coast is designated for recreational and tourism use. Timber harvest or development between the road and the coast is not appropriate except for access or limited public facilities. This area is to be managed for recreation and scenic values. Access to and along the beach front should be maintained along FR 6245, particularly to Woodpecker Cove, for recreational purposes. The parcel also provides several beaches used for public recreation and which contain extensive tide flats. A portion of this parcel may be under consideration by the ADOT/PF as an alternate site for the south Mitkof ferry terminal.

DNR DMLW LCS Response to DMLW RADS: LCS appreciates your review.

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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 Geological and Geophysical Surveys

VII. SUBMITTAL OF PUBLIC COMMENTS

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

Pursuant to *AS 38.05.945 Notice*, DMLW 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://landsales.alaska.gov/> and <http://dnr.alaska.gov/mlw/muni/> 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 G: Public Notice*.

DEADLINE TO SUBMIT WRITTEN COMMENT IS

4:30 PM, FRIDAY, MARCH 3, 2023

VIII. DISCUSSION AND ALTERNATIVES

A. Discussion

This preliminary decision for the Petersburg Borough municipal entitlement land selections covers approximately 3,283 acres of state land. LCS proposes to approve for conveyance and transfer equitable title and management authority on approximately 2,737 acres of state land, identified in *Table 4* below. It also rejects approximately 523 acres of municipal selections. These lands are to be retained in state ownership for reasons outlined below and are identified in *Table 5*. Adjudication of approximately 23 acres will be postponed in this PD, and is listed in *Table 6*, and the reason is listed below.

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

- The CSSEAP states that the State shall retain that portion of Tract E in Unit P-31 that was classified as Public recreation land (CSSEAP pg. 3-122). The natural character shall be maintained. DPOR requested that Tract E be retained in state ownership to provide a border

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to the Beecher Pass State Marine Park. However, the west portion is classified as Settlement land, which is a conveyable classification.

- The CSSEAP states that the State shall retain Unit P-02 to be managed for its viewshed and habitat values. The Department of Transportation & Public Facilities also requested that this unit remains in state ownership because of the planned development of a future road to Kake.

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

- LCS proposes to postpone the adjudication of the land in Section 18 (Lots 5, 6, and 7) and address these lots along with the land on the west side of Woodpecker Cove postponed for conveyance in the DNR Commissioner's Decision on Appeal No. 21-022 dated December 20, 2022, in a future decision. This additional time to research the importance of Woodpecker Cove to DOF&PF and PB will aid in LCS's decision process.

This decision determines that the majority of the municipal selections adjudicated in this decision for which the State currently has title are appropriate for conveyance to PB. 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 PB in obtaining them.

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

This decision further determines that certain conditions and restrictions are appropriate and necessary to protect important resources and public access for those lands to be conveyed to PB. This decision, therefore, imposes restrictions and reservations that are to be part of the conveyance document to ensure adherence to state statutes and administrative code.

Restrictions and reservations are listed in **Section IX. Recommendation and Preliminary Decision**.

B. Alternatives

The following alternatives exist:

1. Take no action to approve or reject PB land selections. This alternative would, in effect, preclude PB'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 PB'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. Also, to postpone in part lands to be addressed in a future decision. This alternative is effective in meeting the intent of the Municipal Entitlement Act to convey appropriately classified state general grant land to PB.

IX. RECOMMENDATION AND PRELIMINARY DECISION

A. Recommended Alternative

This decision determines that Alternative 3 is the preferred action and best fits the intent of the Municipal Entitlement Act. PB's 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 PB on those lands approved for conveyance once the FFD becomes effective.
5. Management authority for public access easements is transferred to PB 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 the 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 PB 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, PB 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 PB municipal land entitlement pursuant to *AS 29.65.010*.
9. Notification to the Alaska State Historic Preservation Office in accordance with *AS 41.35.070(d)* is required upon discovery of historic, prehistoric, or archaeological sites, locations, remains, or objects.

Restrictions and Reservations

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

1. Valid existing rights, including reservations, easements, and exceptions in the U.S. Patent, or other state or federal conveyance, and in acts authorizing the issue thereof; easements, rights-of-way, covenants, conditions, reservations, notes on the plat, and restrictions of record, if any.
2. Reservation of a 50-foot wide easement on each side of all surveyed and unsurveyed section lines in accordance with *AS 19.10.010* and *11 AAC 51.025*.
3. Reservation of a continuous public access easement, 50 feet wide, upland of and adjacent to the MHW of marine waters pursuant to *AS 38.05.127* and *11 AAC 51*.
4. Reservation of a continuous public access easement, 50 feet wide, upland of and adjacent to the OHWM of all navigable, waters determined to be navigable in fact, and on the bed and 50 feet upland along public waters pursuant to *AS 38.05.127* and *11 AAC 51*.
5. Reservation of the mineral estate pursuant to Section 6(i) of the Alaska Statehood Act and *AS 38.05.125*; and reservation of reasonably necessary access to the mineral estate in accordance with *AS 38.05.130*.
6. Reservation of Woodpecker Cove Road (FDR 6245) right-of-way, 66 feet wide.
7. Reservation of Mitkof Highway (Hwy 7) right-of-way, 132 feet wide.

C. Recommended Action on Municipal Selections

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

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LANDS PROPOSED FOR CONVEYANCE

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

Table 4

| Map Name | MTR | Section and Legal Description | Acres |
|---|-----------|---|----------------|
| Fanshaw Bay | C053S075E | Sec. 16: Tract K (205 ac.) Sec. 17: Tract K and Tract P on Foot Island (122.26 ac.) Sec. 20: Tract K (200 ac.) Sec. 21: Tract K (220 ac.) Sec. 28: Tract K (180 ac.) Sec. 29: Tract K (32 ac.) Sec. 32: Tract Q on Whitney Island (120.68 ac.) Sec. 33: Tract K (230 ac.) | 1309.94 |
| | C054S075E | Sec. 04: Tract A and Tract B (245 ac.) Sec. 05: Tract B on Whitney Island (185.89 ac.) Sec. 09: Tract A (68.4 ac.) | 499.29 |
| Hood Point | C061S079E | Sec. 2: W portion of Tract E that is classified as Settlement | 12.32 |
| SE Mitkof | C061S082E | Sec. 12: Tract A east of Mitkof Hwy ROW (12 ac.) Sec. 13: Tract A east of Mitkof Hwy ROW (1 ac.) Sec. 22: Tract A southeast of Mitkof Hwy ROW (39 ac.) Sec. 23: Tract A southeast of Mitkof Hwy ROW (7 ac.) Sec. 27: Tract A southeast of Mitkof Hwy ROW (8 ac.) | 67 |
| Sumner Strait | C062S081E | Sec. 08: all lands south of FDR 6245 (114 ac.) Sec. 09: Lot 1 (33.05 ac.), Lot 2 (38.44 ac.), Lot 3 (34.42 ac.), Lot 4 (11 ac.), NE1/4SW1/4 (40 ac.), W1/2SE1/4 (80 ac.), NW1/4SW1/4 that is southeast of FDR 6245 (25 ac.), S1/2NE1/4 that is south of FDR 6245 (25 ac.), SE1/4NW1/4 that is south of FDR 6245 (68 ac.).....354.91 ac Sec. 10: Lot 1 (38.79 ac.), Lot 2 (5.01 ac.), Lot 3 (7.32 ac.), Lot 4 (0.7 ac.), SE1/4NW1/4 (40 ac.), N1/2NW1/4 that is southeast of FDR 6545 (75 ac.).....166.82 ac Sec. 16: Lot 1 (0.61 ac.), Lot 2 (15.13 ac.), Lot 3 (1.63 ac.), Lot 4 (3.81 ac.).....21.18 ac. Sec. 17: Lot 1 (29.7 ac.), Lot 2 (25.56 ac.), Lot 3 (1.63 ac.), Lot 4 (11.58 ac.), Lot 5 (2.76 ac.), NW1/4NE1/4 (40 ac.), N1/2NW1/4 (80 ac.).....191.23 ac. | 848.14 |
| PROPOSED CONVEYANCE: TOTAL APPROXIMATE ACRES | | | 2736.69 |

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LANDS PROPOSED TO BE REJECTED

Table 5 lists those lands that were selected by PB that are proposed for rejection in this decision. These include lands to be retained by the State because the interest of the State outweighs that of PB or the CSSEAP states the land will be retained by the State.

Table 5

| Map Name | MTR | Section and Legal Description | Acres |
|--|-----------|--|---------------|
| Prolewy Point | C058S079E | Sec. 10: Lot 1 (32.49 ac.), Lot 2 (46.63 ac.), E1/2 SW1/4 (80 ac.)....159.12 ac. Sec. 15: Lot 1 (16.18 ac.), Lot 2 (25.39 ac.), Lot 3 (33.11 ac.), Lot 4 (39.86 ac.), Lot 5 (39.83 ac.), Lot 6 (39.92 ac.), W1/2 NE1/4 (80 ac.), E1/2 NW1/4 (80 ac.).....354.29 ac. | 513.41 |
| Hood Point | C061S079E | Sec. 2: E portion of Tract E that is classified Public recreation land | 10.03 |
| PROPOSED REJECTION: TOTAL APPROXIMATE ACRES | | | 523.44 |

LANDS PROPOSED TO BE POSTPONED

Table 6 lists those lands that were selected by PB that are proposed for postponement in this decision. These lands will be addressed in another decision that will also cover the land postponed by the DNR Commissioner's Decision on Appeal No. 21-022 dated December 20, 2022.

Table 6

| Map Name | MTR | Section and Legal Description | Acres |
|---|-----------|--|-------------|
| Sumner Strait | C062S081E | Sec. 18: Lot 5 (16.36 ac.), Lot 6 (5.37 ac.), Lot 7 (1.37 ac.).....23.1 ac. | 23.1 |
| PROPOSED POSTPONEMENT: TOTAL APPROXIMATE ACRES | | | 23.1 |

Preliminary Decision

Petersburg Borough - ADL 108982, 108983, 108984
Page 22 of 22

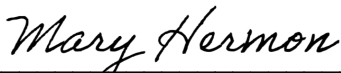
D. Preliminary Decision

The following are the findings of this Preliminary Decision:

1. It is appropriate to convey approximately 2,736.69 acres of state-owned land to Petersburg Borough. This decision determines that the interest of the State in retaining this land does not outweigh PB's interest in obtaining it.
2. It is appropriate to reject 523.44 acres of borough land selections that the CSSEAP states shall be retained in state ownership.
3. It is appropriate to postpone approximately 23.1 acres to be addressed in a future decision.

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 2
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

1/27/2013

Date



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

1/27/2023

Date

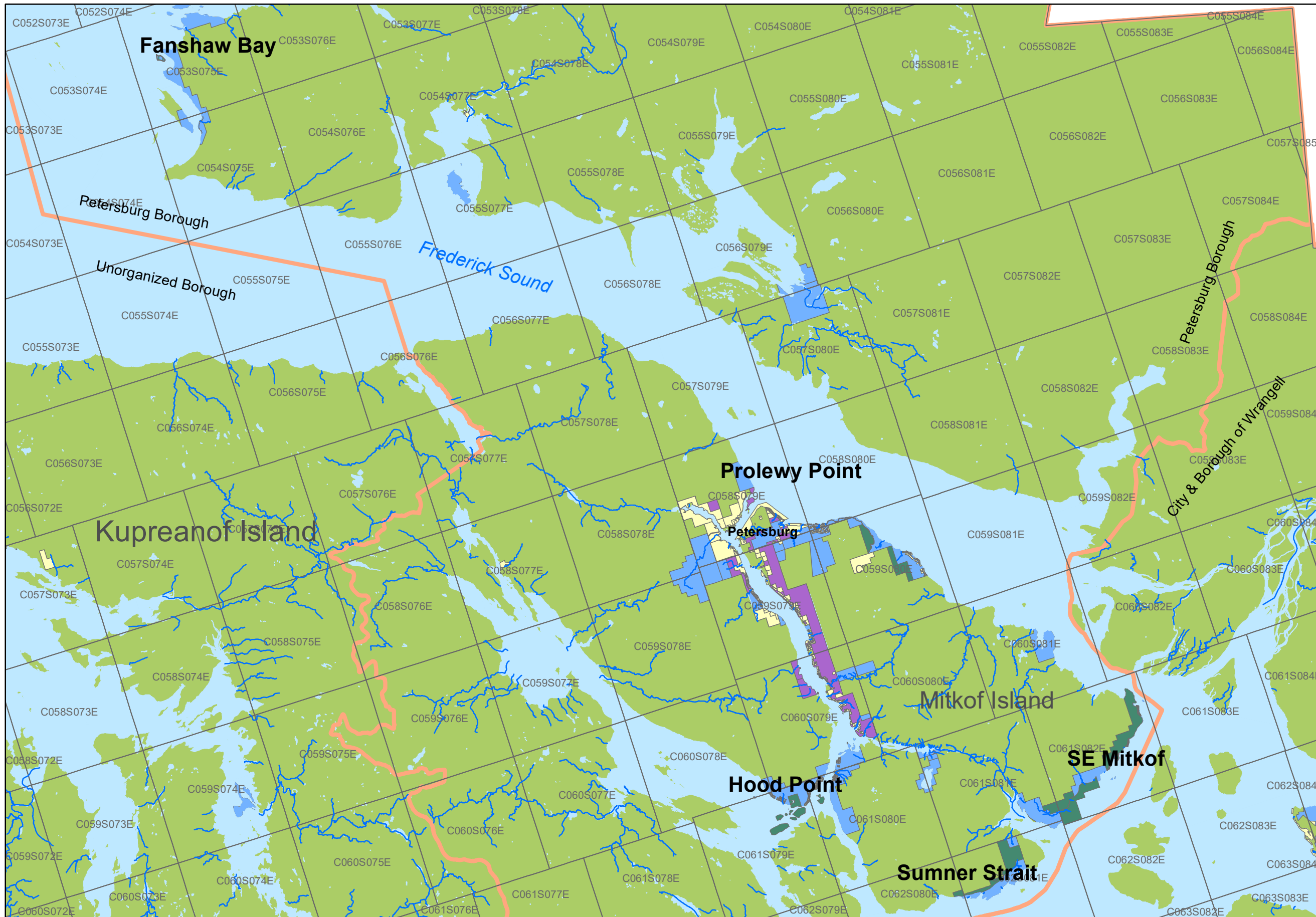
PETERSBURG BOROUGH

Municipal Selections

Vicinity

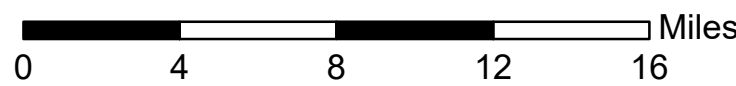
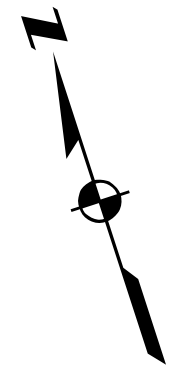
Preliminary Decision

ADLs 108982, 108983, 108984



Legend

- Anadromous Streams
- Borough Boundary
- LDA (State Forest, PUA, etc)
- State Land, TA or Patented
- Mental Health Trust Land
- US Forest Service Land
- Private Owned Land



January 2023

DNR-DMLW-LCS-ME

Petersburg Borough







Municipal Selections

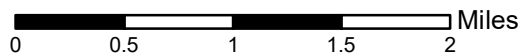
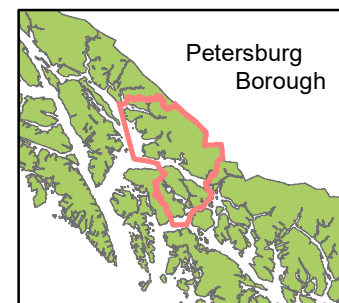
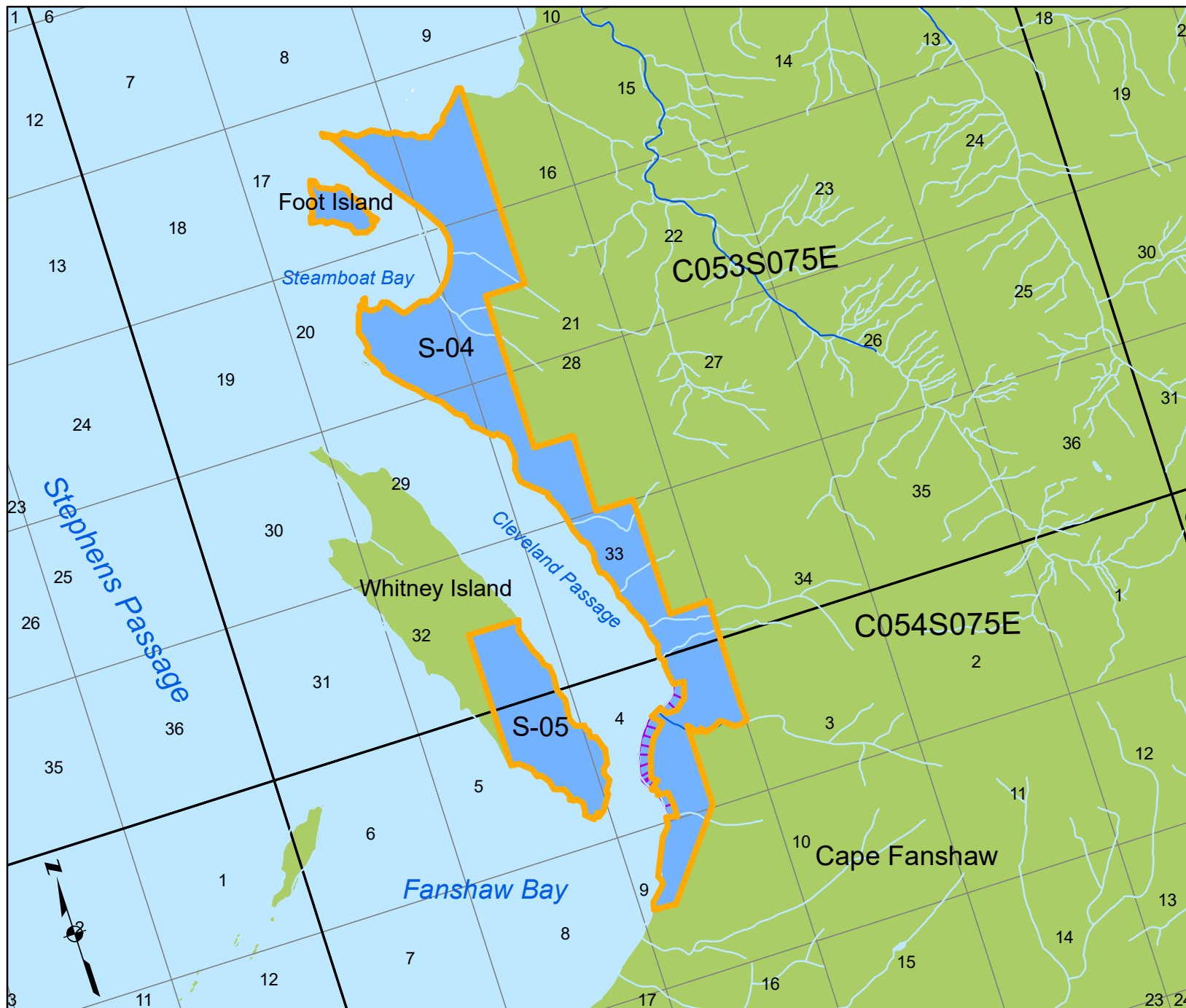
Preliminary Decision

ADL 108984

Fanshaw Bay

Legend

-  Anadromous Stream
-  Proposed Conveyance to the Borough
-  State Land, TA or PA
-  USFS Land
- S-04, S-05 CSSE Area Plan Units**
-  Section line
-  Township line



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.



SOA-DNR-DMLW-LCS

January 2023

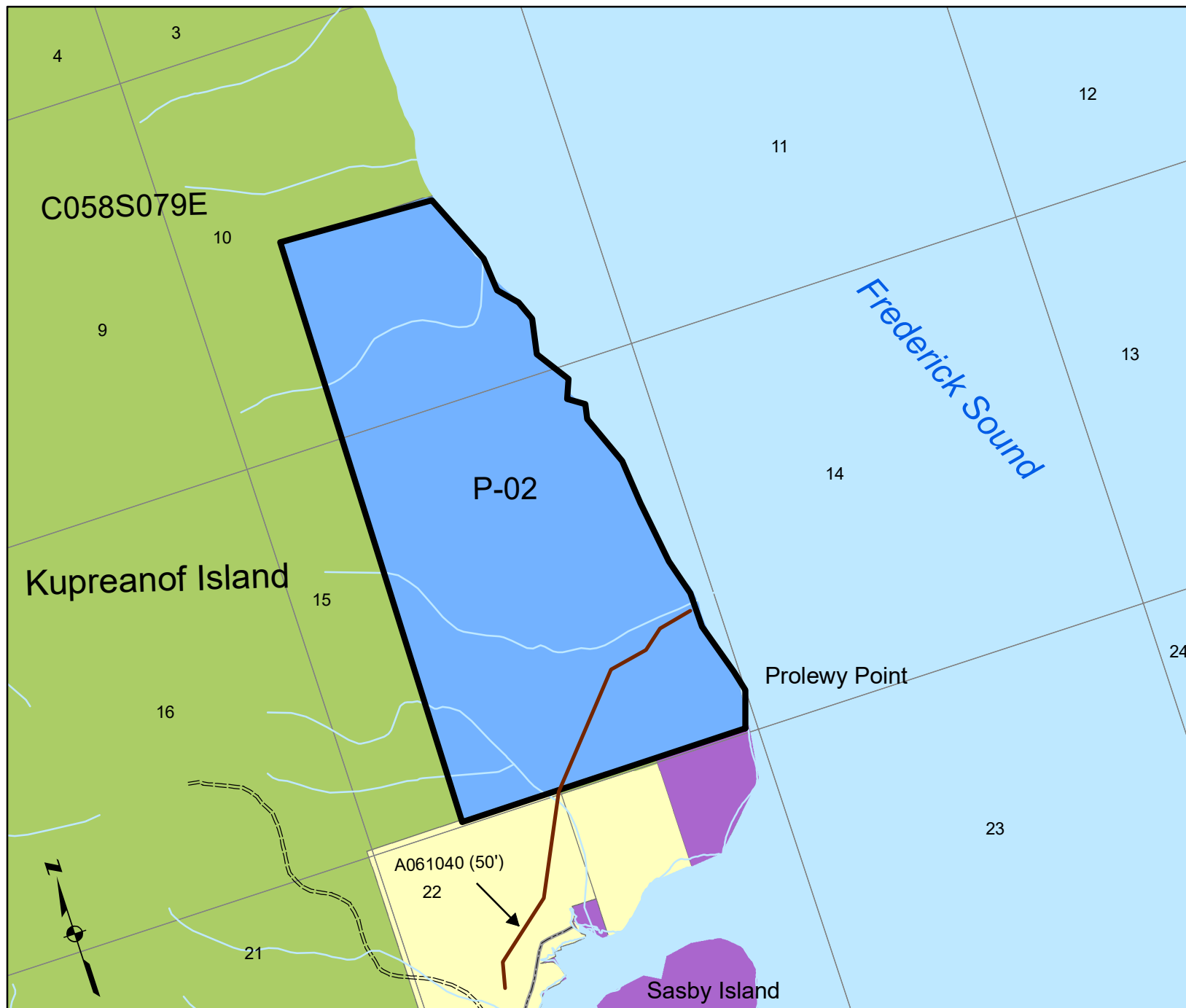
Petersburg Borough

Municipal Selections

Preliminary Decision

ADL 108983

Prolewy Point



Legend

- ==== Trail
- Road
- ▭ Proposed Rejection
- ▭ State Land, TA or PA
- ▭ Mental Health Trust Land
- ▭ Private Land
- ▭ USFS Land
- P-02 CSSE Area Plan Unit
- Section line



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Petersburg Borough

Municipal Selections

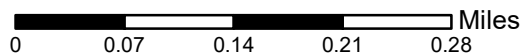
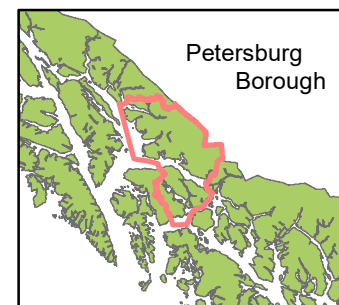
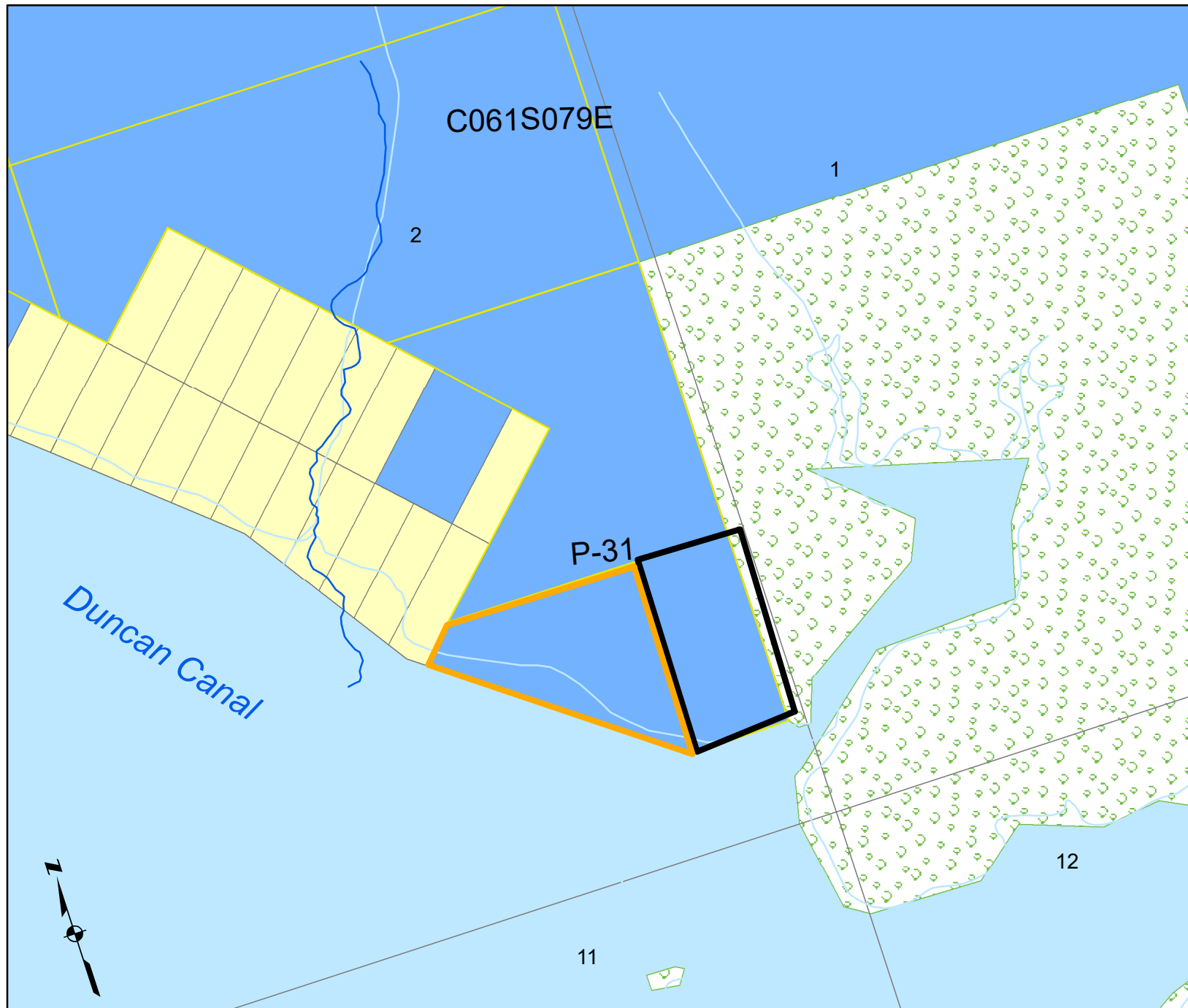
Preliminary Decision

ADL 108984

Hood Point

Legend

- Anadromous Stream
- Surveyed Tracts
- Proposed Conveyance to the Borough
- Proposed Rejection
- State Land, TA or PA
- State Marine Park
Beecher Pass LDA
- Private Land
- P-31 CSSE Area Plan Unit
- Section line



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SOA-DNR-DMLW-LCS

January 2023

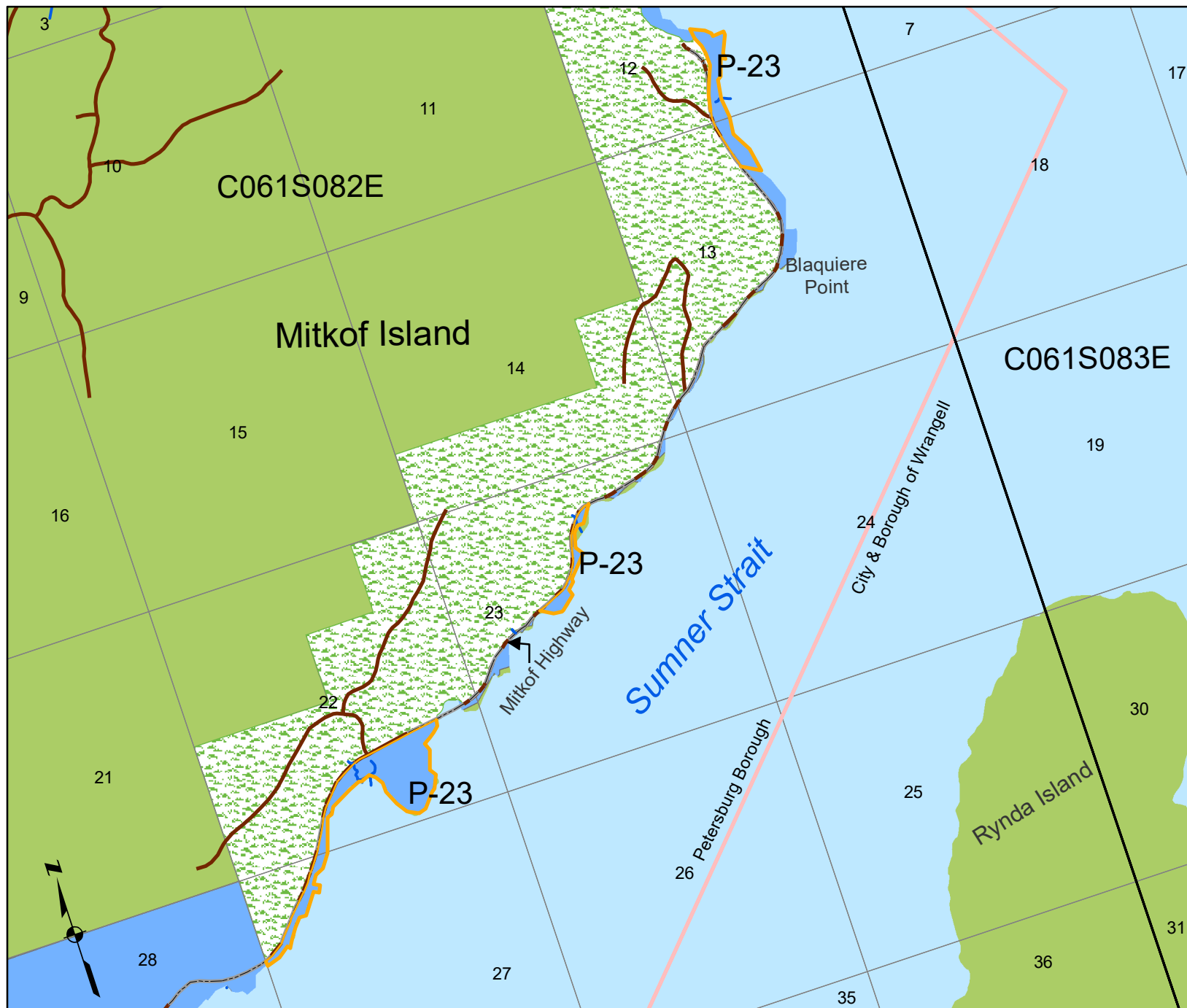
Petersburg Borough

Municipal Selections

Preliminary Decision

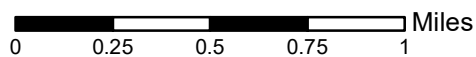
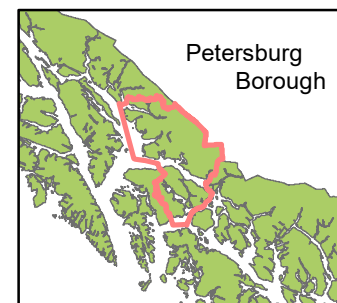
ADL 108982

SE Mitkof



Legend

- Anadromous Stream
- Forest Development Road
- Proposed Conveyance to the Borough
- State Land, TA or PA
- SE State Forest LDA
- USFS Land
- Borough Boundary
- P-23 CSSE Area Plan Unit
- Section line
- Township line



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SOA-DNR-DMLW-LCS

January 2023

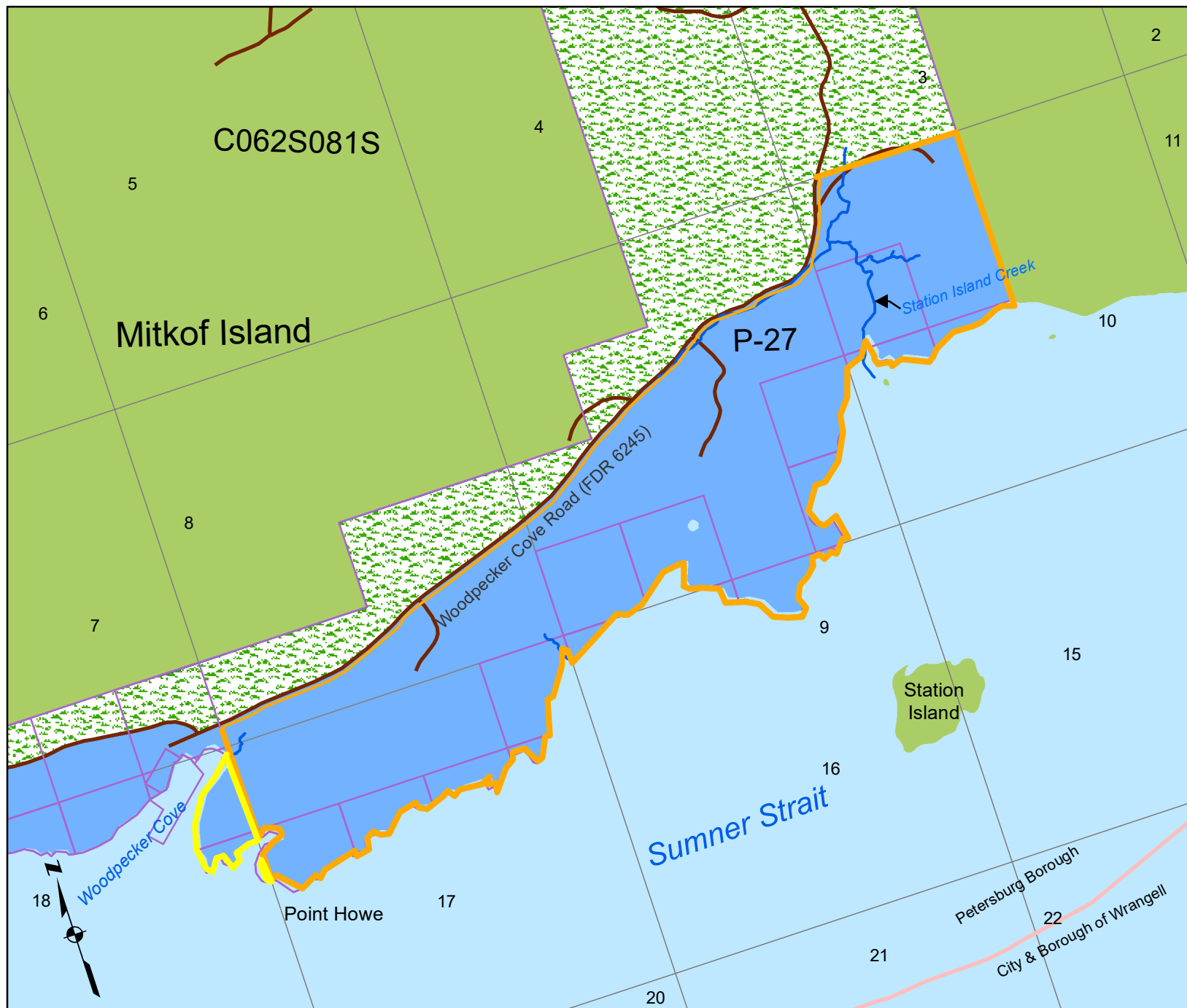
Petersburg Borough

Municipal Selections

Preliminary Decision

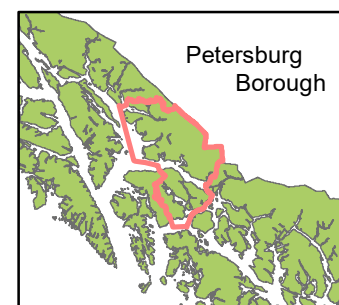
ADL 108982

Sumner Strait



Legend

- Anadromous Stream
- Forest Development Road
- Surveyed Lots
- Proposed Conveyance to the Borough
- Proposed Postponement
- State Land, TA or PA
- SE State Forest LDA
- USFS Land
- Borough Boundary
- P-27 CSSE Area Plan Unit
- Section line



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SOA-DNR-DMLW-LCS

January 2023

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

Attachment G: PUBLIC NOTICE

Requesting Input for a Proposed Conveyance Under AS 29.65

Petersburg Borough Municipal Land Entitlement Selections – ADL 108982, 108983, and 108984

COMMENT PERIOD ENDS: 4:30 PM, FRIDAY, MARCH 3, 2023

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 2,737 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 regions of the Central Southern Southeast Area Plan (Region 1. Sumdum-Stephans Passage and Region 3. Petersburg). LCS finds that the proposed conveyance is consistent with the requirements of AS 29.65, and that the Borough's interest in obtaining these state lands outweigh the State's interest in retaining them. And postpone adjudication on approximately 23 acres.

LCS proposes to reject approximately 523 acres of borough selections where the CSSAP states the land will be retained by the State.

Pursuant to AS 38.05.945 Notice, the public is invited to comment on this PD which proposes to transfer ownership of state land to the Petersburg Borough. **The deadline for submitting public comment is 4:30 PM, Friday, March 3, 2023.** Only persons from whom LCS receives timely written comment during the identified comment period will be eligible to file and appeal of the Final Finding and Decision (FFD). Comments must be received in writing to the Division of Mining, Land and Water, Attention: Mary Hermon, at 550 West 7th Avenue, Suite 640, Anchorage, Alaska 99501, by fax at (907) 269-8916, or by email at mary.hermon@alaska.gov. If you have questions, call Mary Hermon at (907) 269-6546.

The public notice is available on the Alaska Online Public Notice System at: <http://dnr.alaska.gov/commis/pic/pubnotfrm.htm>. The Preliminary Decision is available on the DMLW Municipal Entitlement web site at: <http://dnr.alaska.gov/mlw/muni/> and on the DMLW Land Sales website at: <http://landsales.alaska.gov>.

Following the comment deadline, those written responses received will be considered and the decision may be modified to incorporate public comments in a Final Finding and Decision (FFD). Only persons who comment during this public comment period will be eligible to file an administrative appeal of the FFD. A copy of the FFD will be sent to any person who comments on the PD. The FFD will include the appeal instructions. Please direct all inquiries or questions to Mary Hermon, at the above address, electronic mail, phone or by fax.

DNR is prepared to accommodate individuals with disabilities by providing auxiliary aids or services when requested. Individuals with audio impairments who wish to respond to this decision by telephone may call the DNR, Public Information Center in Anchorage between the hours of operation: 10:00 AM to 5:00 PM, Monday through Friday at TTY: 711 for Alaska relay or 800-770-8973 or go to <http://dnr.alaska.gov/commis/pic/>

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.