

February 21, 2023

TO: ASSEMBLY
FR: LIZ CABRERA

RE: AMENDED FINAL FINDING AND DECISION – PETERSBURG BOROUGH MUNICIPAL LAND SELECTIONS
ADL 108981

BACKGROUND: On January 27, the DNR published a modified final decision to convey 550.378 acres at Thomas Bay (See attached, Amended Finding and Decision).

This decision corrects the error on conveyance of the subdivision roads. Previously, the DNR insisted the road acreage would be conveyed, but the reality is the roads were dedicated to the public when the subdivision was approved and cannot be conveyed by the state.

This modified decision corrects this by reinstating the road acreage (65 acres) to the borough and the state retaining ownership of the roads. The borough will have management authority of the roads but is under no obligation to build or maintain any roads within the subdivision. There is a 30-day public comment period followed by a 20-day appeal period on this decision. If no appeal is filed, the decision goes into effect and DNR can reissue the draft patent that they have been working on since early November.

Deadline to submit comments to the LCS is February 24, 2023

SUMMARY OF DRAFT COMMENTS: The draft comments are intended to convey three basic ideas:

1. The Petersburg Borough supports the amended final decision.
2. Reiterates the borough is under no obligation to maintain or construct any roads within the Thomas Bay Subdivision.
3. Requests a map or description of the roads under the borough's management authority.

February 24, 2023

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

RE: COMMENTS FROM THE PETERSBURG BOROUGH REGARDING THE LCS AMENDED FINAL FINDING
AND DECISION – PETERSBURG BOROUGH MUNICIPAL LAND SELECTIONS ADL 108981

Dear Ms. Hermon,

The Petersburg Borough supports the LCS's January 25, 2023 modification to the July 6, 2021 Final Finding and Decision for ADL 108981 to convey approximately 550.378 acres of state owned vacant, unappropriated, unreserved (VUU) general grant land in Thomas Bay to the borough.

Further, the borough supports the LCS's modification to retain 68.825 acres of subdivision roads and that same amount of acreage being returned to the borough for use on a future land entitlement selection.

While the subdivision roads are dedicated to the public and owned by the state, the borough will assume management authority. As discussed previously with LCS, management authority does not obligate the Petersburg Borough to build or maintain any road within the Thomas Bay Subdivision.¹

Lastly, the road system in Thomas Bay includes federal and state established rights-of-way. To avoid any confusion in the future, the borough would appreciate it if LCS would provide a map or other description of the "subdivision roads" under management authority of the Petersburg Borough.

Thank you for the opportunity to comment.

Sincerely,

Liz Cabrera
Municipal Land Agent
Petersburg Borough

¹ Email from Rachel Longacre, Chief, Land Conveyance Section, dated December 15, 2022.

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

AMENDED FINAL FINDING AND DECISION
CONVEYANCE OF STATE LAND UNDER AS 29.65

PETERSBURG BOROUGH
MUNICIPAL LAND ENTITLEMENT SELECTIONS
ADL 108981

This Amended Final Finding and Decision is based on a Final Finding and Decision (FFD) issued on July 6, 2021, to convey in part and reject in part, lands selected by the Petersburg Borough in partial fulfillment of their general grant entitlement under *AS 29.65.010 Determination of Entitlement of Boroughs and Unified Municipalities*. Public notice will be issued for this Amended Final Finding and Decision (AFFD).

SUMMARY OF THE DECISION

The July 6, 2021 FFD for ADL 108981 affirmed the April 1, 2021 Preliminary Decision (PD) which approved approximately 616 acres for conveyance and transfer of management authority to the Petersburg Borough (PB) and rejected conveyance of approximately 85 acres.

While drafting a patent to PB for the lands approved in the FFD, it was found that the roads in the Thomas Bay Subdivision were dedicated to public use on Plat 82-16 (ASLS 81-235) and, therefore, cannot be conveyed. This dedication was done when the Petersburg Borough area was still unorganized as a Home Ruled Borough (which was accomplished in 2013). Division of Mining, Land and Water (DMLW) Survey Section stated that there was no 'acceptance' statement on the plat, so the dedication statement was considered 'an offer of dedication to the public.' Once a lot or road is developed within the subdivision, that offer is accepted. Therefore, the rights-of-ways are effectively 'owned' by the public, and the State cannot convey them out of state ownership.

On December 9, 2022, staff from the DMLW Land Conveyance Section (LCS) met with PB to discuss options for reaching a compromise to accommodate the ownership of the roads in the Thomas Bay Subdivision. LCS staff presented two options:

1. LCS issues an amendment to the FFD to remove the road acreage from the approved conveyance and retain the roads in state ownership. This acreage would be credited back to PB; however, PB would have management authority over the roads.
2. PB requests a vacation of the roads in the subdivision, submitting the costs to create the vacation and therefore gaining ownership of the acreage of the roads.

On December 16, 2022, PB identified option #1 as their preferred option.

MODIFICATIONS TO THE DECISION

A review of the FFD shows that the following modifications are needed:

Modification One: Section II. Recommended Action is modified to state, "This decision covers approximately 701 acres, approving approximately 550 acres for conveyance and transfer of management authority, and rejecting conveyance of approximately 151 acres."

Modification Two: Section VII. Discussion and Final Finding and Decision is modified to state, "Through this Final Finding and Decision, DNR determines that it is in the best interest of the State to convey 550.378 acres of state land with management authority transferred to PB upon the effective date of this decision."

Modification Three: Table 1 is modified as follows:

Map Name	MTR	Section and Legal Description Thomas Bay Subdivision ASLS 81-235, Plat 82-16	Acres
Thomas Bay	C056S079E	Sec. 35: BL 5 Lot 1 (2.458 ac.), portion Lot 2 (0.547 ac.)	3.005
	C057S079E	Sec. 03: BL 2 Lots 14, 15 (7.811 ac.) BL 3 Lots 5-11 (26.45 ac.), portions Lots 4, 12 (1.049 ac.) BL 7 Lots 12, 13 (8.518 ac.), portions Lots 11, 14 (4.617 ac.) BL 8 Lots 3, 4 (9.309 ac.), portions Lots 2, 5 (4.742 ac.) BL 9 Portions Lots 2-4 (4.932 ac.) BL 10 Lots 1-6 (25.95 ac.), portions Lots 7, 8, 9, 10, 11 (8.432 ac.) BL 11 Lots 1-5 (20.27 ac.) BL 12 Lots 1-3 (12.2 ac.), portion Lot 4 (1.019 ac.)	135.299
		Sec. 04: BL 3 Lots 1-3, 13-18 (34.09 ac.), portions Lots 4, 12 (6.102 ac.) BL 4 Lots 1-8 (33.641 ac.) BL 5 Lots 3, 4 (5.361 ac.), portion Lot 2 (2.017 ac.), BL 6 Lots 1-11 (44.944 ac.) BL 7 Lots 1-10, 15 (48.264 ac.), portions Lots 11, 14 (4.618 ac.) BL 8 Lots 1, 6 (8.606 ac.), portions Lots 2, 5 (5.021 ac.) BL 9 Lots 1, 5-7 (15.499 ac.), portions Lots 2-4 (4.546 ac.) BL 10 Portions Lots 8, 10, 11 (2.089 ac.) BL 16 Portions Lots 1, 2 (3.524 ac.) BL 17 Lots 1, 2 (5.689 ac.), portions Lots 3, 4 (.685 ac.)	224.697
		Sec. 09: BL 10 Lots 17-19 (12.972 ac.), portions Lots 10, 15, 16, 20, 21 (10.47 ac.) BL 14 Portions Lots 1-3 (7.4 ac.) BL 15 Lots 1-5 (21.003 ac.) BL 16 Lots 3-7 (22.473 ac.), portions Lots 1, 2 (4.262 ac.) BL 17 Lots 5-12 (32.778 ac.), portions Lots 3, 4 (5.835 ac.)	117.193
		Sec. 10: BL 10 Lots 12-14 (12.909 ac.), portions of Lots 7, 10, 11, 15, 16, 20, 21 (16.687 ac.) BL 12 portion Lot 4 (2.282 ac.), Lot 5 (3.704 ac.) BL 13 Lots 1-5 (21.892 ac.) BL 14 Lots 4, 5 (8.222 ac.), portions Lots 1-3 (4.488 ac.)	70.184
Approximate Total Approved to be Conveyed			550.378

Modification Four -Table 2 is modified as follows:

Map Name	MTR	Section and Legal Description Thomas Bay Subdivision ASLS 81-235, Plat 82-16	Acres
Thomas Bay	C056S079E	Sec. 35: Portion Tract A (52.624 ac.)	52.624
	C056S080E	Sec. 04: Portion Tract A (8.85 ac.), Tract D (23.522 ac.)	32.372
		Subdivision Roads	65.825
Approximate Total to be Rejected:			150.821

Modification Five: Finding for this decision are modified to state:

1. That it is appropriate to convey approximately 550.378 acres of state-owned land to Petersburg Borough. This decision determines that the interest of the State to retain this land does not outweigh the interests of the Petersburg Borough to obtain it.
2. That it is appropriate to reject approximately 150.821 acres of borough land selections because the roads within the Thomas Bay Subdivision are to remain in state ownership and the CSSEAP states Tracts A and D and will be retained by the State.

Amended Final Finding and Decision

Petersburg Borough, ADL 108981

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3. It is appropriate to give management authority to Petersburg Borough over the state-owned roads for public access and maintenance.

Other than the changes noted herein, all of the terms and conditions of the Final Finding and Decision and Preliminary Decision (ADL 108981) remain as written and approved.



Mary Hermon, Adjudicator
Natural Resource Specialist 2
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

1/25/2023

Date

Approval:



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

1/25/2023

Date

APPEAL PROVISION

An eligible person affected by this decision, and who provided timely written comment or public hearing testimony to the department, may appeal the decision to the DNR Commissioner per *AS 44.37.011* and *11 AAC 02*. Any appeal must be received within twenty (20) calendar days after issuance of this decision under *11 AAC 02.040*. An eligible person must first appeal a decision to the Commissioner before seeking relief in superior court. The Alaska State Courts establish its own rules for timely appealing final administrative orders and decisions of the department. Appeals may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. Appeals must be accompanied by the fee established in *11 AAC 05.160(d)(1)(F)*, which has been set at \$200 under the provisions of *11 AAC 05.160 (a)-(b)*. A .pdf or print copy of *11 AAC 02* may be obtained by contacting Erik Fossum via phone at (907) 269-8429, via email at erik.fossum@alaska.gov, and is also available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.