

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

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

**PETERSBURG BOROUGH**  
**MUNICIPAL LAND ENTITLEMENT SELECTIONS**  
**ADL 108981**

**I. SUPPLEMENTAL STATEMENT**

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) dated April 1, 2021. The attached map to this FFD depicts the selection that is the focus of this decision. The PD (attached) has received the required public review.

**II. RECOMMENDED ACTION**

The State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) recommends that Alternative 3, as described in the PD, is the preferred action since it best fits the intent and requirements of the Municipal Entitlement Act. This decision covers approximately 701 acres, approving approximately 616 acres for conveyance and transfer of management authority, and rejecting conveyance of approximately 85 acres.

**III. AUTHORITY**

The authority for conveyance of state land is pursuant to *AS 29.65 General Grant Land* and the authority for the Final Finding and Decision is pursuant to *AS 38.05.035(e) Power and Duties of the Director*.

**IV. PUBLIC PARTICIPATION AND INPUT**

Pursuant to *AS 38.05.945 Notice*, public notice announcing the Preliminary Decision for the proposed conveyance of municipal entitlement selections along with the solicitation for public comment was published and distributed in the following manner:

- Posted under State of Alaska Online Public Notice from April 1 to May 3, 2021.
- Posted on the DNR Land Sales website from April 1 to May 3, 2021.
- Posted on the DNR Municipal Entitlement website from April 1 to May 3, 2021.
- Mailed with a request to post for 30 days to the Kupreanof and Petersburg postmasters and Petersburg Library per *AS 38.05.945(c)(4)*.
- Mailed to the regional corporation and local tribes per *AS 38.05.945(c)(2)-(3)*.
- Mailed and/or emailed to the Petersburg Borough.

The public notice stated that written comments must be received by 4:30 PM, Monday, May 3, 2021 in order to ensure consideration and eligibility to appeal. For more information, refer to the attached PD.

**V. SUMMARY OF COMMENTS**

DNR DMLW LCS received comments from one private individual, Alaska Department of Transportation and Public Facilities, Alaska Department of Fish and Game, and the Petersburg Borough during the public comment period. All comments received during the public comment period are summarized and addressed below.

DNR DMLW LCS received a brief comment of non-objection from the following agency:  
Alaska Department of Transportation and Public Facilities.

*DNR DMLW LCS Response:* LCS appreciates your review.

Alaska Department of Fish & Game (ADF&G) Comment:

The Alaska Department of Fish and Game (ADF&G) has reviewed the Preliminary Decision (PD) for ADL 108981, a municipal selection by the Petersburg Borough in the Thomas Bay area within Section 35, T56S, R79E and Sections 3, 4 and 9, T57S, R80E CRM.

ADF&G concurs with the decision to retain Tracts A and D in state ownership due to their value for public recreation and anadromous fish habitat. However, we would like to reiterate our previous comments that it is our expert opinion that due to the extremely low gradient/elevation terrain and proximity to the Patterson River, there is a high likelihood that there are several more streams supporting anadromous fish in the conveyance area. Prior to conveyance, the presence of any streams should be definitively located so that 50' easements upland of ordinary high water pursuant to AS 38.05.127 can be applied. Additionally, we would like to reiterate that conveyance and subsequent development of these lands may reduce the available habitat base for moose in the Thomas Bay region and associated hunting opportunities.

*DNR DMLW LCS Response:* LCS appreciates your review and ADF&G's desire to protect moose habitat and anadromous streams. 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 and per AS 29.65.130(6) *Definitions*, conveyance of state land to municipalities are made "without reservation or condition except as may be required by law." ADF&G may need to coordinate with the Borough in regard to any additional stream surveys needed to determine if any of the streams support anadromous fish. Central/Southern Southeast Area Plan (CSSEAP) classifies much of the unit that contains the selections being adjudicated by this decision as Resource Management (RMG) and Public Recreation (PUR) which are conveyable classifications under AS 29.65. The management intent set forth by the area plan designates this unit for multiple uses and is an important area for Petersburg residents. LCS must balance the needs of the State with the needs of the Borough and finds that the State's interest in retaining this land does not outweigh the interests of the Borough in obtaining it.

Petersburg Borough Comment:

The Petersburg Borough has completed its preliminary review of ADL 108981.

The Petersburg Borough supports the LCS's decision to convey approximately 616.203 acres of state owned vacant, unappropriated, unreserved (VUU) general grant land at Thomas Bay.

*DNR DMLW LCS General Response:* LCS appreciates your review and seeks to further explain the PD/FFD process. The FFD complements and updates the PD as necessary to provide clarification, make modifications to the original proposed action if technical errors were identified in the PD or due to comments received during the public comment period, and to act as our final decision on an action proposed through a PD. Therefore, language or wording that needs clarification or modification due to a technical error will be addressed in this FFD and updates or modifications made to the PD are included in **Section V. Modifications to Decision** below. To provide clarity on specific items brought up by the Borough through their comment, please see LCS's responses incorporated below.

The Petersburg Borough has the following additional comments regarding statements in the Preliminary Decision:

**Section V.**

A. The City of Petersburg was dissolved in favor of the Petersburg Borough in 2013. Please delete reference to the City of Petersburg in the FFD.

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Petersburg Borough, ADL 108981

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*DNR DMLW LCS Response:* In terms of municipal entitlement processes, the City of Petersburg was dissolved or subsumed under the authority of the Borough. However, Petersburg as a home rule city still exists and was our intended reference in Section V, subsection A of the Preliminary Decision. For modifications and clarifications to this decision, please see **Section V. Modifications to Decision** below.

B. Table 1. ADL 106536 (Section 35), Quiet Title. Please confirm in the FFD whether this quiet title action is Tract B-2 and not selected by the municipality.

*DNR DMLW LCS Response:* LCS confirms that Tract B-2 was part of the quiet title and the tract was not included in the selections provided by the Borough.

B. Table 1. ADL 106536. Please confirm whether FDR 6101 was misidentified as 6010 in the PD.

*DNR DMLW LCS Response:* FDR 6101 was misidentified in Table 1 as FDR 6010. For modifications to this decision, please see **Section V. Modifications to Decision** below.

B. Table 1. ADL 106536 (Sections 3, 4, and 9), Quiet Title. Please confirm in the FFD that this quiet title action refers to Forest Development Roads 6252, 6256, 6010 (or 6101).

*DNR DMLW LCS Response:* The Quiet Title is part of the Final Partial Judgment, Case No. A86-630 Civil (8/6/1987), recorded in the Petersburg Recording District, Book 30, Page 181, October 1987. This document covers the Forest Development Roads in the Thomas Bay area.

B. Table 1. ADL 106536. Please confirm whether FDR 6103 is located within the lands considered for conveyance.

*DNR DMLW LCS Response:* FDR 6103 runs along the east side of Patterson River and is outside of the lands being adjudicated by this decision.

## Section VI.

A. The selections in ADL 108981 were submitted to the DNR in February of 2018, not in 2019 as stated in the Preliminary Decision. Please correct this in the FFD.

*DNR DMLW LCS Response:* Thank you for identifying this point of clarification. The selections being adjudicated by this decision were submitted by the Borough in 2018. The assignment of the Alaska Division of Lands (ADL) case file number for this decision was done in 2019. For modifications to this decision, please see **Section V. Modifications to Decision** below

B.3. The PD establishes that the mineral estate is reserved to the state. Under Mineral Order 275, all parcels within the Thomas Bay Subdivision are closed to mineral entry. Please confirm in the FFD that there are no existing mineral related leases, permits, licenses, or claims. Please clarify whether MO 275 remains in force following conveyance of parcels within the Thomas Bay Subdivision.

*DNR DMLW LCS Response:* Mineral Closing Order 275 remains in effect, and no mineral activity or authorizations have been identified within the area. Lands closed to mineral entry may be reopened through a separate administrative process. The Thomas Bay Subdivision was closed to mineral entry under Mineral Closing Order 275 when it was considered for the DNR Land Sales program. Municipal lands are not required to have lands closed to mineral entry, but generally the State will not reopen closed mineral estate prior to conveyance.

D. The small road system in Thomas Bay developed because of state timber sales and an active material sale in the area. There is no "developing subdivision" in Thomas Bay.

*DNR DMLW LCS Response:* The Thomas Bay Alaska Subdivision, ASLS No. 81-235 was filed as Plat 82-16 in October 21, 1982 and although the parcels are not in private ownership, the subdivision can be considered to be "developing" since it's recordation as segments of the platted access have been developed and utilized.

- D.1. The borough concurs with the LCS that the section-line easements that run through the Thomas Bay Subdivision (Plat 82-16) were vacated by Plat 82-17.
- D.2. The borough concurs with the LCS that there are no RS-2477 rights-of-way with the selected lands.

*DNR DMLW LCS Response:* LCS appreciates your review and concurrence.

- D.3. The borough requests the following language be amended in *3 Navigable and Public Waters* to read: Unless a state approved survey exists, a survey will determine the Ordinary High Water Mark of the navigable and public waters....

*DNR DMLW LCS Response:* The statement is correct as stated in the PD and no amendment to the language is necessary.

- D. 4. The borough concurs with the LCS that there are no navigable waters bordering or within the selected lands.
- D. 4. The borough notes that no waters navigable in fact have been identified by the state in this decision.
- D. 4. The borough notes that the LCS does not propose any alternative upland access routes to be reserved under 11 AAC 51.045(d)(l).
- D.4. The borough concurs with the LCS that the beds of public waters are to be conveyed to the borough with the adjoining approved lands.

*DNR DMLW LCS Response:* LCS appreciates your review and concurrence.

D. 4. Table 3 lists two unnamed lakes and one unnamed lake and stream in Thomas Bay as determined to be public waters under 11 AAC 51.035. The ADF&G comments makes no mention of these specific waterbodies nor are these called out on the accompanying DNR map. Additional correspondence with the LCS indicated:

- The unnamed lake in Section 35 is within Tract A on lands rejected for conveyance.
- The unnamed lake in Section 4 is located within Tract A on lands rejected for conveyance.
- The unnamed lake and streams in Section 9 are located within Tract D on lands rejected for conveyance.

Please confirm in the FFD whether these represent the state's public waters' reservation determinations.

*DNR DMLW LCS Response:* The unnamed lakes and stream are within Tracts A and D and both Tracts will be rejected from conveyance and retained by the State per the management intent set forth in the area plan. As such, any reservations on those lands are outside the purview of this decision. As described in the PD, waterbodies determined to be public waters under 11 AAC 51.035 were identified in Table 3.

H. The borough requests the language in *H. Conditional Leases and Sales* be amended in the FFD to read: " land approved for conveyance until the land has been surveyed, unless a state-approved survey exists, and ownership transferred to the Borough."

*DNR DMLW LCS Response:* The statement is correct as stated in the PD and no amendment to the language is necessary.

Individual Comment:

I'm not opposed to the Thomas Bay selection but would like to point out the Petersburg policy on disregarding or abolishing traditional public use access easements that were permitted under state control, and if the state can integrate covenants prior to transfer to protect these access rights. We have been systematically expelled from our traditional access in the Scow Bay transfer a few years ago which a disabled homeowner was prohibited from parking which resulted in no longer having reasonable access to the home. This could have been prevented if the state would have included this in the agreement, prior to transfer. So please be aware of this problem that could be a life changing issue for some when these type of land transfers take place.

*DNR DMLW LCS Response:* LCS appreciates your review. When lands are transferred out of state ownership, the title of the land may have reserved access easements, for example: section lines (50-foot easement on both sides), public and navigable water shores (50 feet upland from the OHWM or MHWM), and any reserved ROWs placed through federal patents to the state. Occasionally, section line easements are vacated, like in this subdivision, since the various platted roads offer the public access to the various lots. Vacation of easements will require a separate public process. Public access is reserved in accordance with AS 19.10.010, AS 19.30.400, AS 38.05.125, AS 38.05.127, and 11 AAC 51. LCS can only reserved easements that are an operation of law.

**V. MODIFICATIONS TO DECISION**

Pursuant to comment's received during the public notice period, there a few small corrections or clarifications made between the PD and the FFD. None of these changes affect the amount of acreage approved for conveyance, nor the amount being rejected in this decision.

- LCS recognizes that Petersburg is a home-rule city, however for this decision process within municipal entitlement, the City of Petersburg is considered subsumed under the authority Petersburg Borough.
- FDR 6101 was misidentified in Table 1 of the PD as FDR 6010, however it was correct in Attachment A of the PD.
- FDR 6103 was listed in Table 1 of the PD as a Third-party interest, however this road is outside of the selection that is the focus of this decision.
- The selections being adjudicated by this decision were submitted by the Borough in 2018. The assignment of the ADL case file number for this decision was done in 2019.

**VII. DISCUSSION AND FINAL FINDING AND DECISION**

Through this Final Finding and Decision, DNR determines that it is in the best interest of the State to convey 616.203 acres of state land with management authority transferred to the Borough upon the effective date of this decision. There are no overriding state interests in retaining these selections and the conveyance to the Petersburg Borough is consistent with the requirements for conveyance under AS 29.65, and the management intent requirements of the Central/Southern Southeast Area Plan.

**Lands Approved for Conveyance**

TABLE 1 lists those lands 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 Petersburg Borough municipal land entitlement.

TABLE 1

Map Name	MTR	Section and Legal Description Thomas Bay Subdivision ASLS 81-235, Plat 82-16	Acres
Thomas Bay	C056S079E	<b>Sec. 35:</b> BL 5 Lot 1 (2.458 ac.), portion Lot 2 (0.547 ac.)	3.005
	C057S079E	<b>Sec. 03:</b> 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
		<b>Sec. 04:</b> 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
		<b>Sec. 09:</b> 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
		<b>Sec. 10:</b> 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
		<b>Subdivision roads</b>	65.825
<b>Approximate Total Approved to be Conveyed</b>			<b>616.203</b>

**Lands to be Rejected**

TABLE 2 lists those lands that were selected by Petersburg Borough that are to be rejected from conveyance in this decision. These include lands to be retained by the State because the CSSEAP states the land will be retained by the State.

TABLE 2

Map Name	MTR	Section and Legal Description Thomas Bay Subdivision ASLS 81-235, Plat 82-16	Acres
Thomas Bay	C056S079E	<b>Sec. 35:</b> Portion Tract A (52.624 ac.)	52.624
	C056S080E	<b>Sec. 04:</b> Portion Tract A (8.85 ac.), Tract D (23.522 ac.)	32.372
<b>Approximate Total to be Rejected:</b>			<b>84.996</b>

Recommendation and approval of the Final Finding and Decision follow.

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The Land Conveyance Section recommends proceeding with the action as described in the Preliminary Decision. This action is undertaken under relevant authorities.

The following are the findings for this decision:

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

The findings presented above have been reviewed and considered. The Public Notice has been accomplished in accordance with AS 38.05.945. The case files have been found to be complete and the requirements of all applicable statutes have been satisfied. It has been determined that it is in the best interest of the State to proceed with the conveyances identified in this FFD to the Borough under the authority of AS 29.65.



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

7/6/2021  
Date

Under the authority of the applicable statutes, it is in the best interest of the state to proceed with the recommended action as described in this Final Finding and Decision.

*for* → 

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

7/6/2021  
Date

ATTACHMENTS:

Attachment A: Thomas Bay

**APPEAL PROVISION**

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A person affected by this decision may appeal it, in accordance with *11 AAC 02*. Any appeal must be received in writing within 20 calendar days after the date of the issuance of this decision, as defined in *11 AAC 02.040(c)* and *(d)*, and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 West 7<sup>th</sup> Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 907-269-8918, or sent by electronic mail to [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov). Under *11 AAC 02.030*, appeals filed under *11 AAC 02* must be accompanied by the fee established in *11 AAC 05.160(d)(1)(F)*, which has been set at \$250 under the provisions of *11 AAC 05.160(a)* and *(b)*.

If no appeal is filed by the appeal deadline, this decision goes into effect as a final administrative order and decision of the department on the 31<sup>st</sup> day after issuance. An eligible person must first appeal this decision in accordance with *11 AAC 02* before appealing this decision to the Superior Court (*11 AAC 02.020(a)* and *(b)*). A copy of *11 AAC 02* may be obtained from any regional office of the Department of Natural Resources or at: <http://www.akleg.gov/basis/aac.asp>.

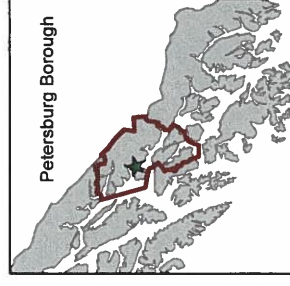
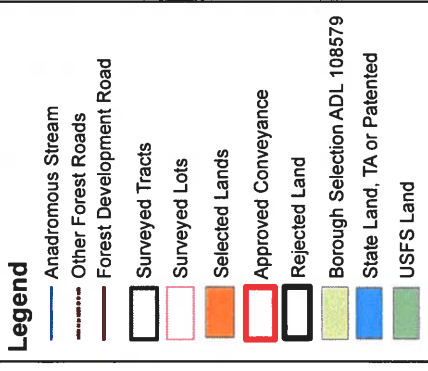


ATTACHMENT A

Petersburg Borough  
Municipal Selections

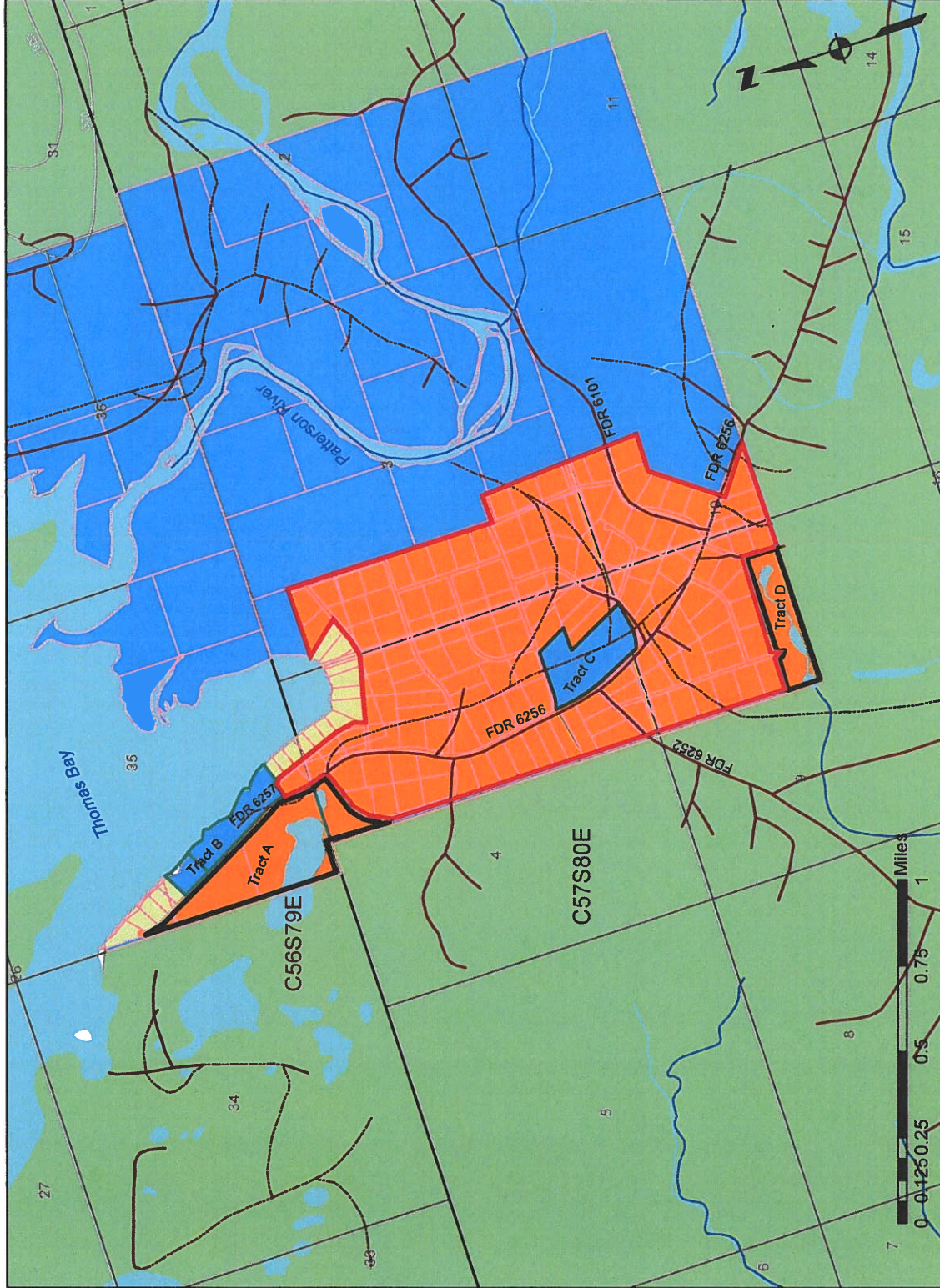
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DNR-DMLWLCS-ME

June 2021



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