

HB

657

State of Alaska

LOCAL BOUNDARY COMMISSION

Petition from City of Petersburg )  
Requesting annexation of )  
remaining portion of Mitkof Island)

STATEMENT OF DECISION

Whereas, on November 22, 1977, the City of Petersburg submitted a petition to the Local Boundary Commission through the Department of Community and Regional Affairs in accordance with Title 29 of the Alaska Statutes requesting annexation of the area generally described as the balance of Mitkof Island; and

Whereas, on December 1, 1977, the Department found the petition in proper form with the requisite content and accompanying exhibits; and

Whereas, upon notification by the Department of the petition's sufficiency, the Local Boundary Commission scheduled a public hearing with notice as prescribed by law; and

Whereas, the Local Boundary Commission conducted a physical inspection of the proposed annexation territory and held a public hearing in the Petersburg City Council Chambers on Monday, January 9, 1978; and

Whereas, the Local Boundary Commission held a decisional meeting in Anchorage on January 16, 1978, to review the proceedings on the annexation petition;

NOW THEREFORE, the Local Boundary Commission makes the following findings of fact and enters its decision thereto:

The portion of the petition territory accepted by the Commission meets the regulatory standards for annexation as follows:

19 Alaska Administrative Code 05.010 (a) (3): The territory on either side of the Mitkof Highway within the recommended annexation extending southerly from the current City of Petersburg limits is generally being utilized and developed for residential and business purposes and such growth generally represents an extension of the Petersburg community beyond current city limits.

19 AAC 05.010 (a) (4): The territory recommended for inclusion in the city is in need of City of Petersburg general fund services such as fire and police protection, land use planning and zoning and the City is the most appropriate local government entity for providing such needed services. The City is capable of providing such services and has presented a differential taxation plan which the Commission finds appropriate for integrating the territory with the present city.

19 AAC 05.010 (a) (5): Both the scarcity of developable property and the suitability of property along the Mitkof Highway southerly from the present city limits has resulted in Petersburg community growth in this direction. The Commission foresees continued community growth in the area defined for inclusion in the City by the recommendation, and finds that such growth warrants City of Petersburg jurisdiction.

19 AAC 05.010 (a) (8): The Commission finds that both residents of and property owners in the territory recommended for inclusion within the city benefit from the existence of the adjacent city and by inclusion in the city will make tax contributions commensurate with benefits derived from provision of city services.

On the basis of the foregoing, the Local Boundary Commission affirms its decision to accept, with Commission modification, the City of Petersburg boundary change petition in accordance with Exhibit "A" attached hereto.

LOCAL BOUNDARY COMMISSION.

January 30, 1978

Approved:

s/ *Sigvald J. Strindberg*  
Sigvald J. Strindberg, Chairman

s/ \_\_\_\_\_  
Josephine Anderson

s/ \_\_\_\_\_  
Edward Hopson

Dissenting:

s/ \_\_\_\_\_  
James Dodson

Absent & Excused:

s/ \_\_\_\_\_  
Sheila Gallagher

January 20, 1977

TO: Lisa Rudd

FROM: Annette Smith

RE: HB 657 Transfer of Tidelands to Municipalities

By the Statehood Act, Alaska was granted title to tide and submerged lands according to the Submerged Lands Act of 1953 (PL 31, 83rd Congress, first session; 67 Stat. 29) which governs all other states in the Union.

Tidelands are defined in AS 38.05 as lands between the mean high tide line and a line shown on a plat which shall be the pierhead line established under the Act of Sept. 7, 1957, or the harbor line established under the Act of March 3, 1899, or if no pierhead line or harbor line is established then a line subject to approval by the director, with the concurrence of the commissioner, which shall be seaward of all tidelands and submerged lands occupied or suitable for occupation and development without unreasonable interference with navigation. Needless to say, tidelands come in all difference sizes and shapes!

The state has dispersed some of its tidelands to individuals and municipalities according to a preference right system established in AS 38.05.320. Tidelands preference rights, as defined by 38.05.320, are granted by the state to: individuals claiming rights to the lands by virtue of having occupied the land prior to 1959; and to home rule or first class cities (not boroughs) where their municipal boundaries as of 1964 are contiguous to the tidelands. This leaves out any tidelands of property annexed since 1964.

All other tidelands may be leased to interested parties (cities or individuals) by the state according to state leasing procedures. Tidelands are leased only for proposed development. Development seems to be thought of in terms of structures on the tidelands. AS 38.05.315 provides for leasing of state lands to political subdivisions for less than fair market value and without going through the normal auction procedures.

HB 657 addresses a situation in Skagway. In 1931 the U.S. Government deeded to the City a parcel of land just across the river from the city. Part of that area was outside the city boundaries in 1964 and therefore not eligible for tideland conveyance under the statutes. The area is still outside the city boundaries and it will not be included under the present annexation proposal either.

The city has more or less used the area as a park and picnic area and plans to continue its use as a park. The deed from the Federal Government stipulates perpetual public use. The city has in mind to build a boat float at Smuggler's Cove for picnickers.

Lisa,

I spoke with the City Manager in Skagway to find out what they had in mind for the tidelands. He said the idea popped into their heads when Westours began to think about building a day boat landing in Smugglers Cove to accommodate their new smaller tour boats which they are planning to run from Burners Bay to Skagway. It became apparent that the city did not have authority over the tidelands,

He said the community decided they did not want a commercial facility there, but did think it would be a good idea to have a pleasure boat float facility there and develop the area as a park and picnic area.

The question arises why the city could not go to the state to lease sufficient tidelands for the facility. It seems to be a matter of preference on the city's part.

The DNR apparently has no problem with the bill. Pat Conheady said as much but he said the department does not wish to change its policy with regard to tidelands i.e., it does not wish to change the statutes at this time to allow municipalities to gain title to more tidelands say, on property annexed since 1964.

I wonder if any other community has a situation like Skagway would be if this bill passed. That is, controlling tidelands outside the city boundaries. Are we establishing a precedent that will require more special bills.

Would there be any other communities that would be able to benefit in a similar fashion if the bill were worded slightly differently?

HB657

FYI

February 3, 1978

The Honorable Joseph L. Crisini  
Chairman, Senate Community and  
Regional Affairs Committee  
Alaska State Legislature  
Pouch V, State Capitol  
Juneau, Alaska 99811

Dear Joe:

Thank you for your letter of January 17, 1978, concerning SB 374 relating to transfer of tidelands and submerged lands. As you probably noticed, since your letter, an identical bill has also been introduced in the House (HB 657).

I share the concern that enactment of this legislation would set an undesirable precedent for allowing any other coastal city to seek similar legislation authorizing conveyance of additional tidelands and submerged lands from the state. For this reason and that discussed below, I believe that close examination and careful consideration should be given to SB 374 and its companion.

These bills are drawn narrowly and would authorize application for further conveyance only of tidelands and submerged lands contiguous to land which has been used as a public park for at least 45 years, and which has been granted to a city for park purposes by the United States. This specificity appears to be directed at a particular parcel of land in northern Southeastern Alaska, though I do not know where. Therefore, it is likely that the bills would constitute a "local and special act" in violation of Article II, Section 19 of the Alaska Constitution.

This constitutional provision was discussed and applied by the Alaska Supreme Court in the "Cook Inlet Land Trade Case," State v. Lewis, 559 P.2d 630, 642-4, (Ak. 1977). The court stated that the test to be applied is whether the legislation examined bears a fair and substantial relationship to legitimate state purposes. In that case the court found that the land trade legislation was valid because it was "designed to facilitate statewide land

The Honorable Joseph L. Orisini  
Chairman, Senate Community and  
Regional Affairs Committee

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February 3, 1973

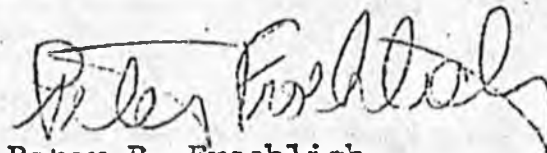
use management and to resolve a host of pressing legal issues arising in the context of ANCSA." It is doubtful that purposes of such statewide concern exist for SB 374 and HB 657.

I hope these comments are of some help to your consideration of SB 374. Please contact me if you have any further questions.

Sincerely,

AVRUM M. CROSS  
ATTORNEY GENERAL

By:



Peter B. Froehlich  
Assistant Attorney General

PBF:bvd

cc: Art Peterson

bcc: Pat Conheady - DNR-Juneau ✓  
Dean Nation - DNR-Anchorage  
Andy Pellowich - DNR-Juneau

# CITY OF SKAGWAY

GATEWAY TO THE GOLD RUSH OF '98"  
P. O. BOX 415 SKAGWAY, ALASKA 99840

January 23, 1978

Senator Joe Orsini, Chairman  
Senate Community & Regional Affairs Committee  
Pouch V  
Juneau, Alaska 99811

Dear Senator Orsini:

This is in response to your letter of 13 January 1978 concerning Senate Bills No. 374, No. 375 and No. 388. These proposed pieces of legislation have been reviewed by the City Council. The position of the City of Skagway on each bill is as follows:

*Identical to HB 657*  
Bill No. 374: The City of Skagway strongly supports the enactment of this bill. This legislation will enable the City to obtain title to tide and submerged lands adjacent to City Park lands which were conveyed to the City by the Federal Government on 30 November 1931. Ownership of these tide lands will facilitate future development of the Park by the City. A copy of the Federal patent transferring the Park lands is enclosed for your information.

Bill No. 375: The City of Skagway supports passage of this bill. It is considered to be in the best interests of the State of Alaska and the Alaskan municipalities that a portion of the permanent fund principal and income be made available for development of municipal capital facilities.

Bill No. 388: The City of Skagway concurs in the goals and objectives of the Alaska Coastal Management Act and, therefore, supports changes which will facilitate the work of the Coastal Policy Council. The City Council, however, does have reservations with regard to the wording of Section 1.(d) of the proposed regulation. To explain:

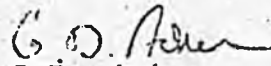
Although the need for alternates to the public members is justified, the method proposed for their selection is considered to be inadequate. It is suggested that, rather than having the principals select their alternates, the Assembly or Councils of the regions nominate alternates and that the Governor make the selections. In other words, alternates for public members be designated in the same manner as the principals.

There is one other point: Under the proposed legislation, it would be possible that alternates might constitute all or a majority of

January 23, 1978  
Senator Joe Orsini  
Page 2

the public participants in coastal policy actions. It is suggested that of the public members acting on coastal policy matters at least a majority be regular members.

Sincerely,

  
G.D. Acker  
City Manager

Enclosure

cc: Representative Rudd  
Senator Ray  
Representative Miller ✓  
Representative Duncan  
Roger Allington  
City Attorney Ruddy

GDACP





Carta

West shore of  
1/21 E 45° W.

Smuggler No 2  
(Unsurveyed)

WEST 32.65 Chs.

M.C. Cor. No 2

W.C.M.C. No 150  
M.C. Cor. No 31

Smuggler No 1  
(Unsurveyed)

U.S. SUR No 1499  
PUBLIC PARK

Area 87.02 Acres

Frame Buildings

Smuggler's Cove

S 44° 11' 09" W 50.76 Chs.  
Trail

Trail

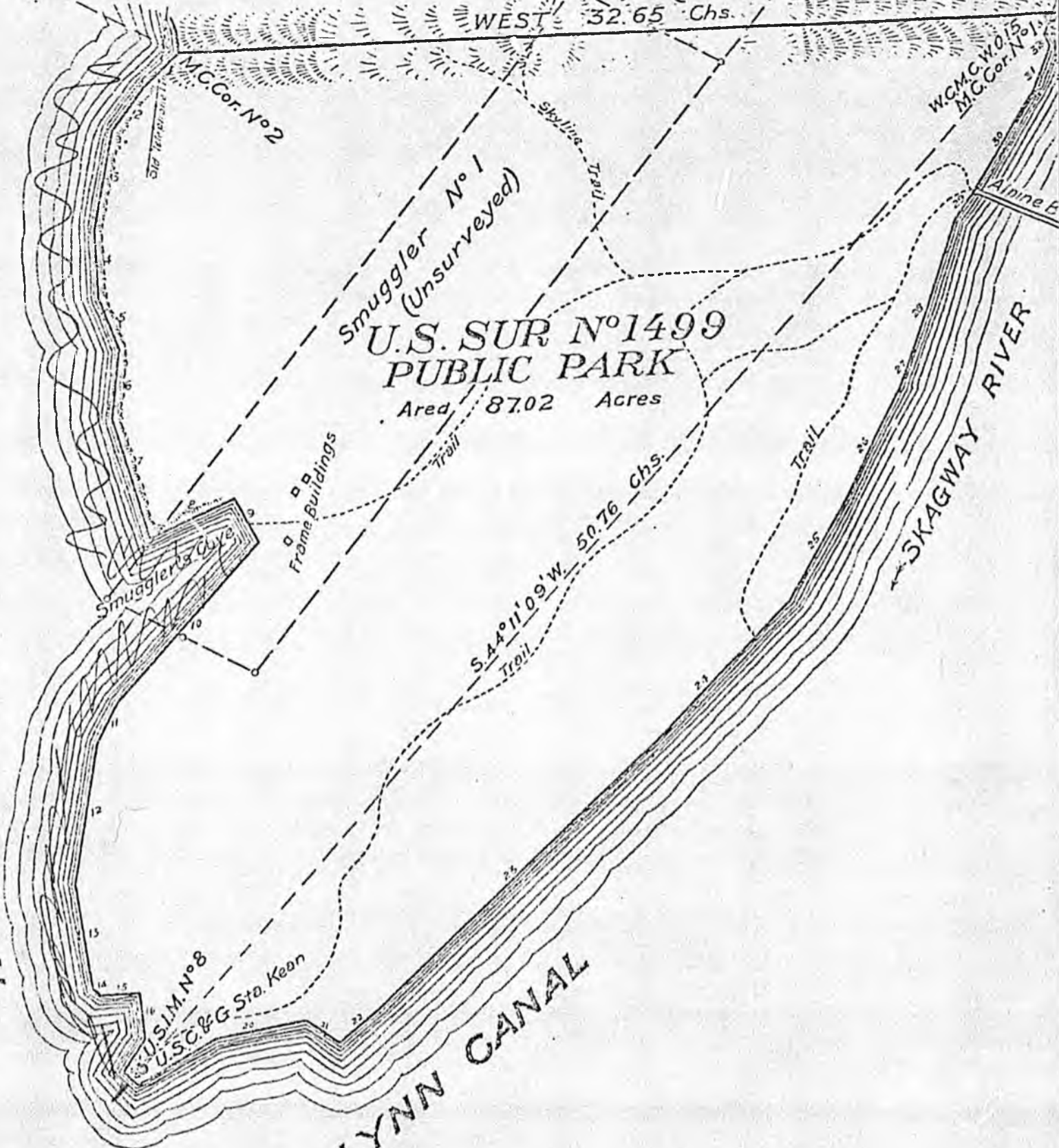
SKAGWAY RIVER

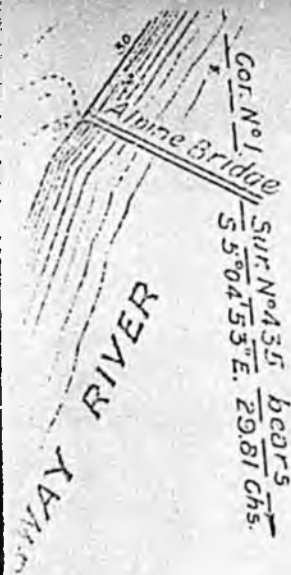
LYNN CANAL

U.S.I.M. No 8  
U.S.C. & G. Sta. Keon

LYNN CANAL

Anne B





Mag. Decr. 22 1/2  
Scale: 1 in. = 5

Latitude 59°26'56"N. Longi

As surveyed under instruction  
the U.S. Surveyor General, date  
1923, and approved by the Com.  
the General Land Office, July

FRED DAHLQUIST

U.S. Cadastral Engineer

July 31 - August 6, 1923

MEANDERS

- 1. S.49°58'W., 1.67 chs.
- 2. S.38°56'W., 1.92 "
- 3. S.12°51'W., 3.70 "
- 4. S. 1°15'E., 2.29 "
- 5. S.20°48'E., 2.14 "
- 6. S. 7°35'W., 2.50 "
- 7. S.15°30'E., 4.44 "
- 8. N.68°03'E., 3.45 "
- 9. S.27°32'E., 1.79 "
- 10. S.45°15'W., 7.72 "
- 11. S.29°24'W., 1.69 "
- 12. S.11°30'W., 5.17 "
- 13. S. 7°09'E., 3.87 "
- 14. S.48°30'E., 0.40 "
- 15. N.69°00'E., 1.43 "
- 16. S. 4°28'E., 1.67 "
- 17. S.36°00'W., 1.51 "
- 18. S.45°00'E., 0.76 "
- 19. N.62°03'E., 3.35 "
- 20. N.81°05'E., 3.42 "
- 21. S.54°24'E., 1.57 "
- 22. N.52°00'E., 1.77 "
- 23. N.49°30'E., 14.00 "
- 24. N.46°35'E., 7.21 "
- 25. N.32°45'E., 4.26 "
- 26. N.29°12'E., 4.44 "
- 27. N.21°33'E., 1.69 "
- 28. N.20°25'E., 4.59 "
- 29. N.37°34'E., 1.15 "
- 30. N.34°51'E., 4.25 "
- 31. N.22°27'E., 1.81 "
- 32. N.18°48'W., 0.50 "
- 33. N.22°37'E., 0.91 "

OFFICE OF U.S. SURVEYOR

Juneau, Alaska, November 1923

The map hereon delineated  
No. 1499, of the Public Park situated  
Skagway, Alaska, is strictly in accordance  
the field notes of the survey  
in this office, which have been  
approved.

*[Signature]*  
U.S. Surveyor

