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

Southeast Regional Office

Preliminary Decision

ADL 109042

Seaborne Corporation

Application for Lease

AS 38.05.075(c)

Executive Summary

This Preliminary Decision (PD) is the State's preliminary best interest finding regarding a proposed disposal of interest in state land. Seaborne Corporation has applied for a 25-year non-competitive tideland lease to install a pier, ramp, float, and storm boom on approximately 0.867 acres of state land for commercial use. The state intends to authorize this lease amendment, contingent on comments received during public notice and the best interest findings contained herein. The public is invited to comment on this PD. The deadline for commenting is 5:00 pm July 17, 2020. Please see the Public Notice section of this decision for requirements related to submitting comments for consideration. Only the applicant and those who comment have the right to appeal the Final Finding and Decision (FFD).

Requested Action

The Seaborne Corporation ("applicant") applied for a lease on December 15, 2019, to install a ramp, pier, float, and storm boom on state tideland and submerged land in Ketchikan, Alaska on Danger Island.

The lease request is for use of a ramp, pier, and float system for commercial use in association with a tour excursion business operated by the applicant. A development diagram is included as Attachment 1.

Proposed Improvements:

- 4 Steel pilings, 12" diameter
- 3 Steel pilings, 18" diameter
- 1 Float, 12' x 60', 720 sq ft
- 1 Aluminum Gangway, 5' x 60', 300 sq ft
- 1 Pier, 10' x 40', 400 sq ft
- 3 Anchors, 10,000 lb each
- 1 Storm boom, 6' diameter, 80' long
- 1 steel buoy, 52" diameter

The total area requested by the applicant is approximately 0.867 acres. Final acreage will be determined by an approved as-built survey of the leasehold.

Proposed Action
The Division of Mining, Land & Water (DMLW) proposes to issue 25-year non-competitive tideland lease to Seaborne Corporation.

Scope of Decision
The scope of this decision is limited to the determination of whether it is in the State's best interest to issue a 25-year non-competitive tideland lease to the applicant. The administrative review for this authorization is defined by AS 38.05.035(e)(1)–(2) and is limited to (1) reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and regulations; (3) facts pertaining to the land or resources; and (4) issues that are material to the determination.

Authority
This lease application is adjudicated pursuant to AS 38.05.035(b)(1) and AS 38.05.035(e) Powers and Duties of the Director, AS 38.05.070 Generally, AS 38.05.075 Leasing Procedures, and AS 38.05.945 Notice. The authority to execute the PD, Final Finding and Decision (FFD), Entry Authorization (EA), and the lease has been delegated to the Regional Managers of the DMLW.

Administrative Record
The administrative record for the proposed action consists of the Constitution of the State of Alaska, the Alaska Land Act as amended, applicable statutes and regulations referenced here-in, the Central Southern Southeast Area Plan, November 2000, (CSSEAP), and other classification references described herein, and the casefile for the application serialized by DNR as ADL 109009.

Location Information

Geographic Location:
The parcel is located in Ketchikan, Alaska. The site is on state tide and submerged land on Danger Island and within the Tongass Narrows.

Property Description:
The proposed lease is located within Section 32, Township 74 South, Range 90 East, Copper River Meridian and Section 5, Township 75 South, Range 90 East, Copper River Meridian and more particularly located seaward and adjacent to Lot 1, USS 3696. The proposed leasehold contains approximately 0.867 acres, more or less.

Other Land Information

Municipality: Ketchikan Gateway Borough
Regional Corporation: N/A
Village Corporation: N/A
Federally Recognized Tribe: Ketchikan Indian Corporation
Approximate Coordinate Location: 55.4025°N, 131.7634°W (WGS 84)

Title
The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying the Tongass Narrows in the section(s) referenced above, on the basis of the Equal Footing Doctrine, the Submerged Lands Act of 1953 and AS 38.04.062 (Identification of State Submerged Lands).

Adjacent Landowners
No adjacent land owners.

Third Party Interests
The Ketchikan Gateway Borough and the Division of Parks and Recreation are third party interests. The Ketchikan Gateway Borough and the Division of Parks and Recreation will be noticed of this decision.

Planning and Classification
State land in the proposed subject area is managed in accordance with policies outlined in CSSEAP and is located within Management Units K-48 (CSSEAP, p. 3-296). The designated land uses are Public Recreation & Tourism-Undeveloped (Ru), and Public Facilities, retain (Pr), which converts to Reserved use land and Public recreation land as the land classifications.

> **Management Intent:**
> The CSSEAP states the management intent for the parcel, which is the Refuge Cove State Recreational Site, is to be administered consistent with the requirements of state park management.
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> According to the Interagency Land Management Transfer (ILMT), ADL 50073, that transferred the land management and jurisdiction from the Department of Natural Resources to the Division of Parks, the management intent for the Refuge Cove State Recreational Site is as follows:
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> Said jurisdiction and management being limited to the surface and so much of the subsurface as may be required in order to make use of the land for public purposes within the jurisdiction of the Assignee, and for so long as required for said public purposes. The right to construct, maintain or improve and remove buildings, roads, airports and works of any description, and to use or remove sand, gravel, timber, or other materials on or near the surface is expressly granted when such action is necessary in order to make use of the lands for any public purposes within the jurisdiction of the Assignee.
>
> **Land Use Designation:**
> Public Recreation and Tourism, Undeveloped (Ru) – This designation applies to those areas that offer or have a high potential for dispersed recreation or tourism and where desirable recreation conditions are scattered or widespread rather than localized. Developed facilities are generally not necessary other than trails, trail signs, primitive

campsites, and other minor improvements. Land in this designation may be conveyed to municipalities depending on the unit's management intent and the relative value of the recreation resources for which the unit was designated. These lands cannot be sold to individuals.

Public Facilities, Retain (Pr) – These sites are reserved for a specific infrastructure to serve state interests. These units are classified Reserved Use Land and are not selectable by municipalities under state law (except under AS 38.05.810). Units designated "Public Facilities – Retain" will be retained in state ownership, while unites designated "Public Facilities – Transfer" may be conveyed to municipalities, but not sold to individuals (CSSEAP, p. 3-328).

Land Classification:
11 AAC 55.170. Reserved use land

(a) Land classified reserved use is land that

(1) is reserved for transfer to another governmental or nongovernmental agency that is performing a public service;

(2) is reserved for transfer through land exchanges; or

(3) has been designated for a public facility.

(b) Nothing in this section requires classification of land identified for a future land exchange under AS 38.50.

11 AAC 55.160. Public recreation land
Land classified public recreation is land that is suitable for recreation uses, waysides, parks, campsites, scenic overlooks, hunting, fishing or boating access sites, trail corridors, or greenbelts along bodies of water or roadways.

This proposed authorization conforms with the CSSEAP and ILMT. The management intent for K-48 does not prohibit the leasing of state land for a commercial pier, ramp, float, and storm boom. It should also be noted that Danger Island is located on the southern boundary of Section 32, therefore the proposed authorization is slightly out of the way from the management unit that addresses the uplands and Lots 1-3 of USS 3681. The proposed authorization follows the land designation Ru because this lease would be promoting tourism and is not selling land. It follows the land designation Pr because the state is still maintaining ownership of the land. This authorization serves the public purpose consistent with the management intent because the applicant is placing improvements on the land to serve the public by means of a commercial dock that will bring people to Danger Island to learn more about Ketchikan's history.

Traditional Use Finding
This finding is not required since the proposed leasehold is located within an organized borough (AS 38.05.830). The Borough will be notified of this Preliminary Decision.

Access
The physical and legal access to the proposed lease site can be achieved by vessel or floatplane over tide and submerged land underlying the Tongass Narrows or over adjacent lands owned by the applicant (Lot 1, USS 3696).

Access Along Public Waters:
The site is located on the Tongass Narrows. Pursuant to AS 38.05.126(a), the public has a constitutional right to free access to, and use of, navigable or public waters of the State of Alaska. Under 11 AAC 51.045 and AS 38.05.127, the DMLW is required to reserve specific public-access easements to and along these waters. Unless comments and other information submitted to the DMLW provide justifiable and convincing evidence to do otherwise, this disposal of state interest will be subject to a 50-foot public access easement seaward and landward of the line of mean high water.

Public Trust Doctrine
Pursuant to AS 38.05.126, the proposed lease will be subject to the principles of the Public Trust Doctrine; specifically, the right of the public to use navigable waterways and the land beneath them for: navigation, commerce, fishing, hunting, protection of areas for ecological studies, and other purposes. These rights must be protected to the maximum extent practicable while allowing for the development of this project. As such, the DMLW is reserving the right to grant other authorizations to the subject area consistent with the Public Trust Doctrine.

Reservation of Mineral Estate
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 and other applicable statutes and regulations.

Mineral Orders
The proposed leasehold does not fall within the areas delineated in Administrative Mineral Closing Order (MCO) No. 747 (CSSEAP, Appendix B). Neither an MCO nor a leasehold location order is necessary or appropriate for this proposed lease.

Hazardous Materials and Potential Contaminants
No hazardous materials will be kept or transported across the leasehold area.

Agency Review
An agency review was conducted on January 28, 2020. The deadline for agency comments was February 11, 2020.
The following agencies were included in the review:

- ADF&G – Wildlife Cons.

- DEC – Commissioners Office
- DEC – Water Plan Review Section Manager
- DNR DMLW OHA – Review & Compliance
- DOT&PF – Statewide ROW Chief
- ADF&G – Habitat Division

Agency Review Comment and Response:
ADF&G Comment: No objections to the issuance of this lease but requested best use practices be employed to prevent contaminants or debris from entering marine waters.

DMLW Response: DMLW will include appropriate stipulations in the lease agreement to ensure best practices are used by the applicant.

DOT&PF Comment: No objections to issuance of this lease, but increased bus traffic on North Tongass Highway entering and departing the Mud Bay Industrial Park may have potential impacts at the driveway entrance onto North Tongass.

DMLW Response: DMLW will make sure applicant is aware of the possible increased driveway use onto North Tongass and will encourage them to work with DOT&PF's Southcoast Region Right-of-Way group in Juneau.

Background
DMLW received the application for this lease on January 14, 2020. Currently, no improvements have been added to the land. The applicant owns the uplands and has a small cabin that they have used as a summer home. This site has not been found with any unauthorized uses associated with it. Danger Island had never been assigned a zoning classification and by default was listed as Future Development. In the fall of 2019, the Seaborne Corporation applied for and received a modified Commercial zoning classification from the Ketchikan Gateway Borough. Aside from the public notice and comment period, other island owners in the 1-mile vicinity were contacted and there were no objections to the proposed activity stated. Subsequently the new classification was granted.

Discussion
The Seley Family of Seley Properties has owned Danger Island for 25 years. They have a cabin on the island in the uplands of this proposed lease that they have used as a summer home. In the summer of 2019, they cleared brush, improved trails, and made repairs to their cabin with the intent to market Danger Island as an excursion for visiting tourists. This pier, ramp, float, and storm boom system will allow them to bring visitors to Danger Island to learn about Ketchikan's history in the Timber, Fishing, and Mining Industry.

At the present time, electrical power is provided by a small diesel generator with battery storage and inverter and the applicant plans for it to remain as such. The applicant plans to install a CXT concrete double vault restroom facility. The vaults will be pumped as needed with effluent deliv-

ered to and processed in Ward Cove. Potable water from the City of Ketchikan will be delivered to Danger Island as needed. Garbage will be transported to the City Landfill collection site. Guests attending this tour will depart waterfront property in Mud Bay owned by Seley Properties by 24-26' boat for the ¾ mile ride to Danger Island. It is anticipated that 5 individuals will work on site and 80-100 guests will visit per day once the facility is established and approved by tour agencies.

An economic interest exists for the state because the realization of this lease and use of the land on Danger Island would generate money for the state through annual land use fees. This authorization will allow for an increase in tourism to Danger Island, therefore bringing more consumers into the state, further stimulating the economy. The proposed activity on state land may provide for additional jobs. There also exists an opportunity to increase the awareness of Ketchikan's history, providing an important educational aspect to visitors' trips as well as to residents of Alaska. Given the applicant's eligibility for a preference right, the minimal impact of the prospective use, and that the activities are in compliance with the land management intent of the ILMT, the proposed lease is found to be in the best interest of the state.

The lease shall be subject to the standard DMLW Lease Agreement (form 102-111, re-vised May 2001), Special Stipulations and the terms and conditions set forth therein (Attachment 2).

Development Plan
The Development Plan (DP) attached to this decision (Attachment 1) and dated December 4, 2019, is under consideration by the DMLW. Should the proposed lease be granted, it is anticipated that the DP will need to be updated throughout the life of the lease as activities and/or infrastructure are added or subtracted. All updates must be approved, in writing, by the DMLW before any construction, deconstruction, replacement of infrastructure, or change in activity will be authorized. The DMLW reserves the right to require additional agency review and/or public notice for changes that are deemed by the DMLW to be beyond the scope of this decision.

Entry Authorization
Pursuant to AS 38.05.075(f), DNR-DMLW will authorize the applicant entry onto state land through the issuance of an Entry Authorization (EA) to allow site development and conduct the required survey and appraisal, described below. The proposed EA is for a term of two years and would be issued after the Final Decision becomes effective. Once the conditions of the EA are met, the lease will be issued. The total lease term is inclusive of the term of the EA.

Performance Guaranty
In accordance with AS 38.05.035, AS 38.05.860, and 11 AAC 96.060(a) Performance Guaranty, the applicant will be required to submit performance guaranties for the lease to incentivize performance of the conditions of the EA and the lease. This provides a mechanism for the state to ensure that the lessee shares any financial costs associated with noncompliance of the lease agreement for site cleanup, restoration, and any associated costs after termination or expiration of the leases. The following bonds will be required:

$9,334.00 Performance Bond: Performance guaranties provide a means to pay for corrective action if the lessee fails to comply with the lease requirements. In accordance with AS 38.05.035(a)(4), the applicant will be required to submit a performance guaranty. The amount of the performance guaranty is based on the scope and the nature of the activity and the potential cost of restoring the site. Performance guaranties are subject to periodic adjustments during the term of the authorization to address increases or decreases in the costs of rectifying problems and rehabilitating state land due to inflation, changes in the level or nature of development, or other appropriate factors.

Insurance

Per Condition #24 of the lease document, the applicant shall secure or purchase at its own expense, and maintain in force at all times during the term of this lease, the following policies of insurance to protect both themselves and the State of Alaska (officers, agents and employees):

Commercial General Liability Insurance Policy: Consistent with AS 38.05.035 (a) to protect the State from liability associated with the use of the site, the applicant shall provide and maintain a comprehensive general liability insurance policy with the State of Alaska named as an additional insured party per the stipulations of the Lease Agreement. The applicant shall secure or purchase at its own expense, and maintain in force at all times during the term of this lease, liability coverage and limits consistent with what is professionally recommended as adequate to protect the applicant and the State, its officers, agents and employees from the liability exposures of ALL the insured's operations on state land. The insurance requirement may be adjusted periodically.

Workers' Compensation Insurance: The applicant shall provide and maintain, for all its employees, Workers' Compensation Insurance as required by AS 23.30.045. Where applicable, coverage must comply with any other statutory obligations, whether Federal (i.e., U.S.L.&H., or, Jones Act) or other state laws in which employees are engaged in work on the leased premises. The insurance policy must contain a waiver of subrogation clause in favor of the State of Alaska.

All insurance policies shall comply with, and be issued by, insurers licensed to transact the business of insurance under Alaska Statute, Title 21. The policy shall be written on an "occurrence" form and shall not be written as a "claims made" form unless specifically reviewed and agreed to by the Division of Risk Management, Department of Administration. The State of Alaska must be named as an additional named insured on the policy with respect to the operations of the applicant on or in conjunction with the leased premises, referred to as ADL 109042.

Survey

In accordance with AS 38.04.045, the applicant must complete an approved Alaska Tideland Survey (ATS)/Alaska State Land Survey (ASLS) that meets the standards of DMLW's Surveys Section prior to lease issuance. The measurements identified in the approved survey will be used to accurately calculate the total acreage. The survey must be performed by a registered Land

Surveyor under survey instructions issued by the Surveys Section. The applicant is responsible for the cost of the survey. The applicant shall submit an initial draft of the survey at least one year prior to the expiration of the EA. Within 10 business days of the execution of the EA, the applicant shall contact the DNR survey section at (907) 269-8523 to obtain instructions.

Before any fill is placed on state tidelands, the line of mean high water must be determined by a survey, consistent with 11 AAC 96.040(d). This pre-construction survey must be conducted in accordance with instructions from the DMLW Surveys Section.

Appraisal
In consultation with the DMLW Appraisals Unit and in accordance with AS 38.05.840(a), it was determined that an appraisal is required. The applicant must provide a fair market value appraisal of the proposed leasehold prepared by a licensed appraiser approved by the Appraisals Unit. The cost of the appraisal shall be borne by the Applicant.

For information on general appraisal requirements and acceptable appraisers, contact the Chief Review Appraiser at:
Department of Natural Resources
Division of Mining, Land & Water
550 West 7th Ave., Suite 1050-A
Anchorage, AK 99501-3579
Phone: 907-269-8512
Fax: 907-269-8914

Compensation

Annual Land Use Fees
The annual land use fee shall be the minimum lease fee of $1,000.00 as established in 11 AAC 58.410(b) until a fair market value appraisal has been completed. Once the appraisal has been completed and fair market value rent for the subject parcel has been determined, if the amount is less than $1,000 per annum the annual fee shall remain at $1,000 in accordance with 11 AAC 58.410(b). However, if it is determined from the appraisal that the fair market value for the subject parcel is greater than the minimum land use fee, then the annual land use fee will be adjusted to reflect this amount from the effective date of the lease. Additionally, Seaborne Corporation will be responsible for the payment of any difference from payments made during the term of the Entry Authorization.

Periodic Rate Adjustment
In accordance with AS 38.05.105, the annual land use fee payment will be subject to adjustment at five-year intervals after the issuance of the lease.

Subleases
Subleasing may be permissible through AS 38.05.095, if the proposed lease is approved. All potential subleases must first be approved in writing by the DMLW. The DMLW may conduct

further agency review and/or public notice before making a determination on the appropriateness of the proposed sublease. The sublease fee will not be less than 25% of the annual fee paid to the lessee by the sublessee.

Reclamation
In accordance with AS 38.05.090, the leasehold must be restored to a "good and marketable condition" as determined by the DMLW within 120 days after termination of the lease.

Public Notice
Pursuant to AS 38.05.945, this PD will be advertised for a 30-day public comment period**,** starting on [date]. In addition, the post office(s) located near the proposed leasehold will be requested to post the notice pursuant to AS 38.05.945(b)(3)(C). The notice will also be posted on the State of Alaska Online Public Notice website pursuant to AS 38.05.945(b)(3)(B) located at: https://aws.state.ak.us/OnlinePublicNotices/Default.aspx. In accordance with AS 38.05.946, a municipality or a corporation entitled to receive notice under AS 38.05.945(c) may hold a hearing within 30 days after the receipt of the notice.

Comments
The public is invited to comment on this PD. All comments received during the public comment period will be considered in the FFD. If public comments result in significant changes to the PD, additional public notice may be given. A copy of the FFD, along with instructions on filing an appeal, will be sent to all persons who comment on the PD. To be eligible to appeal, a person affected by the FFD must provide written comments during the public comment period per AS 38.05.035(i).

Written comments about this project must be received in this office no later than 5:00 PM on July 17, 2020 to be considered.

To submit comments please choose one of the following methods:

Mail: Department of Natural Resources
Division of Mining, Land and Water
Southeast Regional Land Office
ATTN: Kaitlyn Raffier
PO Box 111020
Juneau, AK 99811
Email: Kaitlyn.raffier@alaska.gov
Fax: (907) 500-9011

Questions about the lease portion of this project can be directed to *Kaitlyn Raffier* at (907) 465-3524.

Signature page follows:

Adjudicator Recommendation
Based on the information provided by the applicant and other agencies, as well as review of planning documents, statutes, and regulations, I recommend approving a 25-year lease to the applicant authorizing the applicant to install and maintain a float, pier, ramp, and storm boom for their future tourism business in Ketchikan. I recommend proceeding to public notice for the purpose of providing the members of the public and those entities identified in AS 38.05.945 an opportunity to review and submit comments.

Kaitlyn Raffier, Natural Resources Specialist II — Date 6/17/2020

Preliminary Decision
It is the determination of the Division of Mining, Land & Water that it may be in the State's best interest to issue a 25-year lease to the applicant, as described above. This preliminary decision shall now proceed to public notice.

Lee V. Cole, Jr., Southeast Regional Manager — Date 6-17-2020

ATTACHMENTS:

Attachment 1. Development Plan
Attachment 2. Standard Lease Agreement and Special Stipulations
Attachment 3. Entry Authorization