

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

Southeast Regional Land Office

**Preliminary Decision**

**ADL 109148**

**Southeast Alaska Regional Health Consortium (SEARHC)**

Application for Tideland 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. Southeast Alaska Regional Health Consortium (SEARHC) intends to utilize state tidelands for the purpose of constructing a barge ramp that will be employed to facilitate the transfer of materials to Japonski Island for the construction associated with a major renovation of SEARHC's health care campus and to facilitate the removal and export of existing concrete buildings and contaminated soils. The barge ramp will be constructed to allow direct access for shipping materials from Seattle to the project site via tug and barge. The state intends to authorize the prospective lease, 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 February 26, 2021. 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). The prospective lease site is depicted in yellow in the image below.



Figure 1: ADL 109148 Prospective Lease Site, Located Adjacent to the Northeast Corner of Japonski Island in the Sitka Channel

**Requested Action**

The SEARHC (“applicant”) applied for a state tideland lease on November 9, 2020, to lease approximately 36,000 square feet of state tidelands for the purpose of constructing a barge ramp that will be utilized to facilitate the transfer of materials to Japonski Island for the construction of a major renovation of the applicant’s existing health care campus and to facilitate the removal and export of existing concrete buildings and contaminated soils from SEARHC’s health care campus. The tideland lease site straddles the boundaries of two upland lots. Both lots are owned by the applicant.

Development diagrams are included as Attachment 1.

**Proposed/Existing Improvements:**

40’ wide x 141’ long concrete ramp

1000 cubic yards of class III riprap armor rock fill

3000 cubic yards of shot rock embankment/foundation fill

The total area requested by the applicant is approximately 0.83 acres. Final acreage will be determined by an approved survey of the leasehold.

**Proposed Action**

The Division of Mining, Land & Water (DMLW) proposes to issue a 10-year tideland lease to the applicant for the construction, operation, and maintenance of the barge ramp.

**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 10-year 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 Northern Southeast Area Plan, 2002 (NSAP) and other classification references described herein, and the casefile for the application serialized by DNR as ADL 109148.

**Location Information****Geographic Location:**

The parcel is located in the Sitka Channel, a navigable body of water within Sitka Sound. The site is on state tide and submerged land inside the municipal boundaries of the City and Borough of Sitka.

**Property Description:**

The proposed lease is located within Section 35, Township 55 South, Range 63 East, Copper River Meridian and more particularly located seaward and adjacent to U.S. Survey #1496. The proposed leasehold contains approximately .83 acres, more or less.

**Other Land Information:**

Municipality: City and Borough of Sitka  
Regional Corporation: Sealaska Corporation  
Village Corporation: Shee Atka Incorporated  
Federally Recognized Tribe: Sitka Tribe of Alaska  
Approximate Coordinate Location: 57.054508° N, 135.357536° W

**Title**

The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying the Sitka Channel in the section 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). A DNR Title Report RPT #21441 issued on January 11, 2021, from the DMLW's Realty Services Section attests to the state's ownership of the above-mentioned tidelands.

**Adjacent Landowners**

The applicant owns both the upland-lots landward of the proposed lease site. Other adjacent landowners are as listed:

- State of Alaska Department of Education, Mt. Edgecumbe
- US Department of Health & Human Services

The above listed adjacent landowners will be individually notified of this preliminary decision.

**Third Party Interests**

- City and Borough of Sitka
- Sitka Rocky Gutierrez Airport, Alaska Department of Transportation and Public Facilities (ADOT&PF) Southcoast Region
- US Coast Guard Air Station Sitka

**Planning and Classification**

State land in the proposed subject area is managed in accordance with policies outlined in the Northern Southeast Area Plan, October 2002 (NSEAP) and is located within Management Unit

BT-132 tidelands surrounding Japonski Island in the Sitka Channel. The designated use of the proposed lease site is Public Facilities – Retain (Pr).

**Pr – Public Facilities-Retain.** These sites are reserved for a specific infrastructure to serve state interests (NSEAP pg. 3-3).

**Management Intent.** Tideland parcel is to be managed to ensure the continued operation of the Sitka Airport and the US Coast Guard, and related public facilities. Development authorizations granted by the Department should ensure that this consideration is met (NSEAP pg. 3-275).

The DMLW does not foresee any conflict between the proposed project to construct, operate, and maintain a barge ramp on the proposed lease site and the continued operations of the Sitka Rocky Gutierrez Airport or the US Coast Guard Sitka Air Station. The SEARHC is a non-profit medical, dental, vision and mental health organization serving the health interests of the residents of Southeast Alaska, therefore the construction, maintenance, and use of a barge ramp that supports the SEARHC's efforts to expand their health campus is in line with infrastructure that serves the state's interest. It is the opinion of the DMLW that the project is consistent with the aforementioned designations and management intent of the tidelands surrounding Japonski Island.

The proposed leasehold is within the City and Borough of Sitka and is subject to local planning and zoning ordinances. The City and Borough of Sitka will be individually notified of this decision.

#### **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 is provided by a public right of way on Tongass Drive and Seward Avenue and across the upland lot owned by the applicant. The proposed lease site can also be accessed using nautical transportation through the Sitka Channel.

#### **Access Along Public Waters**

The site is located in the Sitka Channel a navigable body of water. 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 of the line of mean high water.

Operations may involve loud, heavy equipment as well as substantial marine traffic. Public access along public waters at this site may therefore be unsafe during construction and operation of the barge ramp, therefore the DMLW will allow temporary closure of the public access easement. The DMLW will establish a stipulation for the lease, to state:

“Pursuant to provisions of AS 38.05.127(a)(2) the public access easement may be temporarily closed for short periods when operations are occurring that may pose a risk to public safety. The DMLW will defer to the Lessee to determine the appropriate level of notification to be provided to the public should temporary closure occur. If the DMLW receives notification of concerns or issues related to any restriction public access, the DMLW may require alternative measures to address site-specific access issues to ensure that public access can be reasonably provided.”

### **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 an Administrative Mineral Closing Order (MCO). Neither an MCO nor a leasehold location order is necessary or appropriate for this lease.

### **Hazardous Materials and Potential Contaminants**

Hazardous materials like fuel, motor oil, power generators, human waste, trash, gray water, will not be stored within the proposed leasehold. However, the barge ramp will be used to transport soil contaminated with petroleum hydrocarbons. Contaminated soils do not originate on the adjacent uplands, but from areas throughout the existing health care campus, areas that were repurposed from military barracks dating back to WWII. Stipulations will be included in the lease to ensure proper handling and storage of hazardous materials. The use, storage, and removal of all hazardous substances must be done in accordance with existing federal, state, and local laws. Debris (such as soil) contaminated with used motor oil, solvents, or other chemicals may be classified as a hazardous substance.

## **Agency Review**

An agency review was conducted on December 4th, 2020. The deadline for agency comments was January 6th, 2021. The following agencies were included in the review:

- DNR DMLW – Mining
- DNR DMLW – Water
- 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:**

DOT&PF Comment: The Alaska Department of Transportation & Public Facilities does not object but asks the DMLW review the need to authorize this lease since there are two other ramp facilities currently in place adjacent to the proposed lease location.

The DMLW Response: The applicant conveyed to the DMLW that the existing ramps on Japonski Island were not capable of handling the size and type of materials that are expected with the health campus construction and upgrade. SEARHC also stated that it was impractical to bring the materials through the town proper using the road system.

No other comments were received by the DMLW during the agency review period.

## **Background**

The DMLW received a state lease application from the applicant on November 9, 2020. The applicant is planning for a major renovation of their medical center campus near the prospective lease site. The adjacent uplands are owned by the applicant and are forested with spruce and hemlock trees and currently have an existing open-air structure and a canvas structure located on the upland lot. The vegetation will be cleared, and the structures will be deconstructed prior to site development.

On October 28<sup>th</sup>, 2020, the applicant obtained an Army Corps of Engineers (ACOE) Nationwide Permit No.36, serialized as POA-2020-00333, for the placement of fill associated with the proposed activity.

## **Discussion**

The applicant is the upland owner of both upland lots landward of the prospective lease site, qualifying the applicant for a non-competitive lease in accordance with AS 38.05.070 (c). The prospective lease site will be utilized to construct, maintain, and operate a 40' x 141' concrete barge ramp to be used in the renovation of the applicant's medical center campus and to facilitate

the removal of existing concrete buildings and contaminated soils from the applicant's health care campus site. In order to construct the concrete barge ramp, approximately 1,000 cubic yards of armor rock and 3,000 cubic yards of general fill will be discharged on state tidelands.

The construction of the barge ramp will cause soil and other tidal substrate materials to be displaced, but the state does not foresee any significant consequences associated with this action on the marine or terrestrial environments in the area. No hazardous materials will be stored on the prospective lease site.

The development and activities associated with the subject lease are consistent with the designations and management intent of the NSEAP subunit BT-132 tidelands surrounding Japonski Island in the Sitka Channel.

It is the opinion of the DMLW that the State of Alaska benefits from authorizing the prospective lease. The SEARHC is a non-profit medical, dental, vision and mental health organization serving the health interests of the residents of Southeast Alaska. According to the applicant's website, the SEARHC currently employs 1070 people and provides health services in 28 communities in Alaska. The State of Alaska has a shared interest in the continued operation and health services provided by the applicant to the citizens of the state. The State of Alaska also benefits through the development of the regional and state economy associated with the expansion of a large-scale health service provider that delivers over a thousand jobs in the region. A direct benefit will also be realized by the state through annual fees associated with the lease of the subject tidelands.

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

### **Development Plan**

The Development Plan (DP) attached to this decision (Attachment I) and dated January 2, 2020, and November 25, 2020, 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), the 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:

**\$6,563.00 Performance Bond:**

The amount of the performance guaranty would previously have been \$13,126.00. However, the DMLW recently withdrew guidance establishing this figure, and has instead made this figure the maximum bonding amount. Given the security provided by the applicant's history of compliance with other DMLW authorizations and the applicant's standing as a health service provider in Alaska, the DMLW has decided that imposing 50% of the maximum bonding amount is appropriate. Therefore, the applicant will be required to submit a performance guaranty in the amount of \$6,563.00.

**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.

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 109148.



**Survey**

In accordance with AS 38.04.045, the applicant must complete an approved Alaska Tideland Survey (ATS) that meets the standards of the 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.

**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, the SEARHC will be responsible for the payment of any difference from payments made during the term of the Entry Authorization.

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

**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 January 25, 2021. 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 February 26, 2021 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 Region Office  
ATTN: *Ryan Wilson*  
400 Willoughby Avenue, 4<sup>th</sup> Floor  
PO Box 111020  
Juneau, AK 99811-1020  
Email: [ryan.wilson@alaska.gov](mailto:ryan.wilson@alaska.gov)  
Fax: (907) 500 - 9011


Questions about the lease portion of this project can be directed to *Ryan Wilson* at (907) 465-3405.

***Signature page follows:***

**Adjudicator Recommendation**

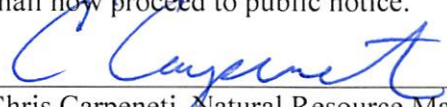
Based on the information provided by the applicant and other agencies, as well as review of planning documents, statutes, and regulations, I recommend approving a 10-year lease to the applicant authorizing the applicant to construct, operate, and maintain a barge ramp to facilitate the transfer of construction materials to the subject lease site, and for the removal and export of existing concrete buildings and contaminated soils. 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.


  
\_\_\_\_\_  
Ryan M. Wilson, Natural Resources Specialist III

  
\_\_\_\_\_  
Date

**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 10-year lease to the applicant, as described above. This preliminary decision shall now proceed to public notice.

  
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Chris Carpeneti, Natural Resource Manager II  
On behalf of Lee V. Cole, Jr., Southeast Regional Manager

  
\_\_\_\_\_  
Date

**ATTACHMENTS:**

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