

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

PRELIMINARY DECISION

ADL 234089

Copper River Seafoods; Ninilchik

Application for Lease

AS 38.05.070(b)

This Preliminary Decision (PD) is the initial determination on a proposed disposal of interest in state land and is subject to comments received during the public notice period. The public is invited to comment on this PD. The deadline for commenting is **11:59 PM January 5, 2024**. Please see the Comments section of this decision for details on how and where to send comments for consideration. Only the applicant and those who comment have the right to appeal the Final Finding and Decision (FFD).

Proposed Action:

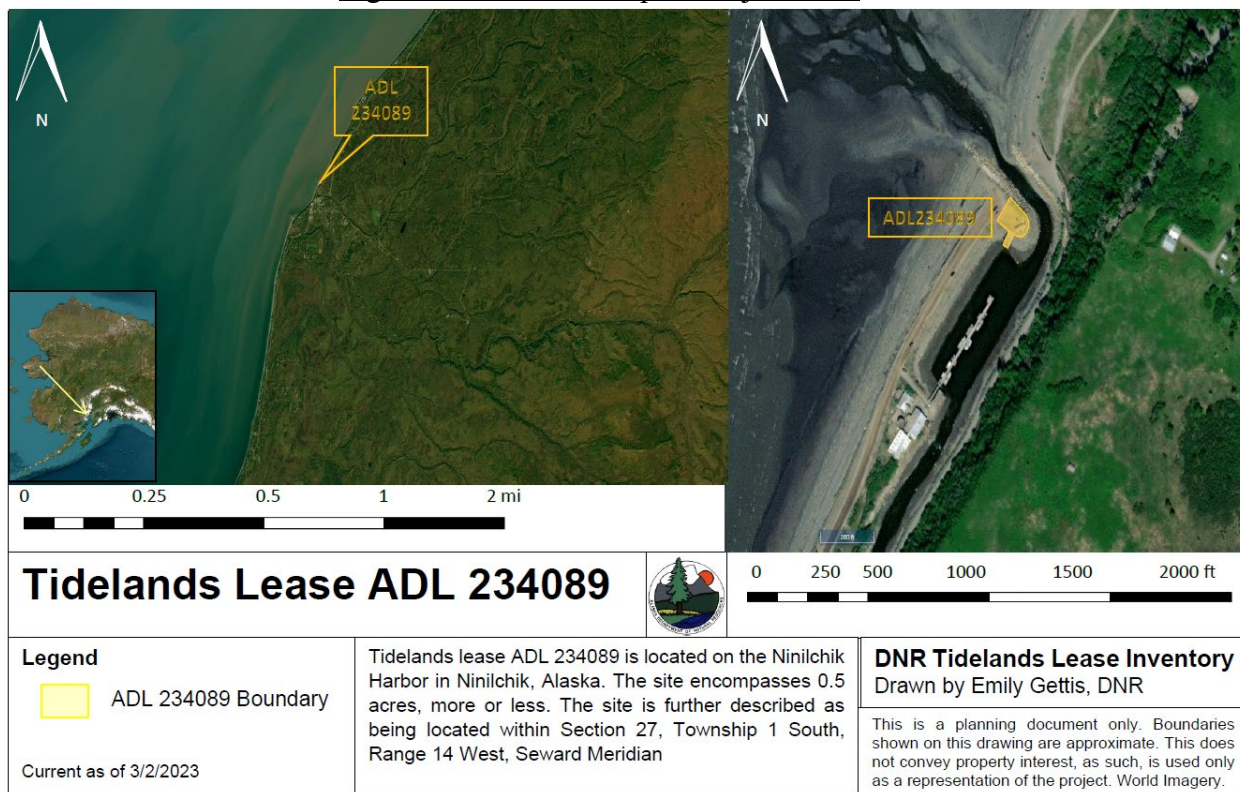
The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Regional Land Office (SCRO) has received a request from Copper River Seafoods, Inc (CRS) to lease 0.5 acres of tide and submerged lands, more or less, for 10 years for the purpose of the continued operation and maintenance of a dock in support of CRS's seafood purchasing and processing business located in Ninilchik, Alaska. The location of the project area is further described as being within the SW 1/4 of the SE 1/4 of Section 27, Township 1 South, Range 14 West, Seward Meridian, Alaska. CRS is proposing to use this site for the continuing use and maintenance of an existing dock and staging area for the unloading of fish from moored vessels, packing and transporting fish for off-premises processing, and temporary storage containment. CRS has been operating in the Ninilchik Harbor under a 3-year permit, serialized ADA-08767 with the State of Alaska Department of Transportation and Public Facilities (DOT&PF). The most recent term dates of the permit begin August 20, 2016 and end August 19, 2019.

SCRO is considering the issuance of a 10-year tideland lease to CRS for the construction, operation, and maintenance of its dock.

Scope of Review:

The scope of this decision is to determine if it is in the State's best interest to issue a 10-year tideland lease under AS 38.05.070(c). This review will also reference the ILMA serialized as ADL 222127. The proposed lease will be managed by SCRO within the DOTP&F ILMA and if authorized, ADL 234089 will exist within the ADL 222127 footprint.

Figure 1: Overview Map of Project Area



Authority:

This lease application is being 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; and AS 38.05.945 Notice.

The authority to execute the PD, FFD, and the lease has been delegated to the Regional Managers of DMLW.

Administrative Record:

Case file ADL 234089 constitutes the administrative record for CRS's lease application.

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 herein, the 2000 Kenai Area Plan and other classification references described herein, and the casefile for the application serialized by DNR as ADL 234089.

Legal Description, Location, and Geographical Features:

The State land where this proposed lease is located is described as follows:

- **Legal Description:** SW 1/4 of the SE 1/4 of Section 27, Township 1 South, Range 14 West, Seward Meridian
- **Geographical Location:** Ninilchik Harbor in Ninilchik, Alaska
- **Approximate Lat/Long:** 60°3'4.69" N, 151°40'2.86" W
- **Area Geographical Features:** On the east coast of central Cook Inlet, located where the Ninilchik River flows into Cook Inlet, in Ninilchik, Alaska
- **Existing Surveys:** ASLS 860166, USS 3407
- **Municipality/Borough:** Kenai Peninsula Borough
- **Native Corporations/Federally Recognized Tribes:** Cook Inlet Region, Incorporated., and Ninilchik Village
- **Size:** 0.5 acre, more or less

Title:

SCRO requested a title report from DMLW's Realty Services Section on January 6, 2023, which has not been received at the time of this decision. Should the title report note any major changes, they will be addressed in the FFD.

Third-Party Interests:

Third-party interests include the ILMA with DOTP&F serialized as ADL 222127.

Classification and Planning:

The project area is subject to the Kenai Area Plan (KAP), Region 7, Management Unit: Homer, Subunit 67C (map number 7A: Deep Creek). The proposed lease area is designated as Public Facilities - Retain which converts to the classification of Reserved Use Land. The intent for KAP subunit 67C is the development of a small boat harbor, as well as road and water access. CPS support operations and continued maintenance of the dock and processing area will not conflict with the classification and ensure that the unit designation, identified as specific infrastructure that serves state interests, is fulfilled.

While the KAP identifies unit 67C as being managed within an Interagency Land Management Assignment (ILMA) to be managed by DOTPF, DOTPF directed CPS to have their lease authorized under SCRO DMLW.

Traditional Use Findings:

The proposed site is located within the Kenai Peninsula Borough. Pursuant to AS 38.05.830 a traditional use finding is not required.

Access:

Access to the site is via the Sterling Highway to Valley Street in Ninilchik.

Access Along Navigable and Public Waters:

Nearly all shore and tidelands in the State of Alaska are subject to a To and Along Easement (AS 38.05.127 and 11 AAC 51.045). The purpose of this easement is to uphold the constitutional right of the public to have free access to, and use of, the State's waterways.

CRS has confirmed that this authorization will not restrict public access to the water. CRS requests that the public does not go under the dock when machinery such as the crane is in operation for public safety. In the interest of public safety, CRS has the ability to restrict access during operation as needed. Proposed activity and lease site operations that utilize the crane will occur seasonally, typically from June to August. Public Access Stipulation #19 states that CRS may allow restriction of public access for a specific period of time, but restriction must be specifically authorized in writing by the Authorized Officer (AO). The lessee must contact the AO in advance for approval.

Public Trust Doctrine:

Pursuant to AS 38.05.126, all authorizations for this site 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.

Agency Review:

An agency review was conducted on October 5, 2022. The deadline for agency comments was October 25, 2022.

The following agencies were included in the review:

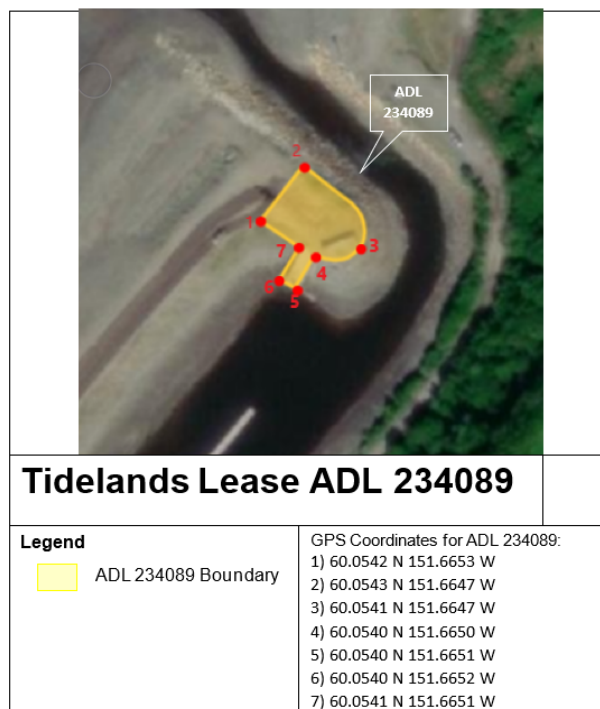
- DNR DMLW Land Conveyance Section
- DNR DMLW Mining Section
- DNR DMLW Public Access Assertion and Defense Section
- DNR DMLW Realty Services Section
- DNR DMLW Survey Section
- DNR DMLW Water Resources Section
- DNR Division of Agriculture
- DNR Division of Forestry & Fire Protection
- DNR Division of Geological & Geophysical Surveys
- DNR Division of Oil and Gas / State Pipeline Coordinator Service
- DNR Division of Parks and Outdoor Recreation / Office of History and Archaeology – State Historic Preservation Office
- DNR Natural Resource Conservation and Development Board
- Department of Commerce, Community and Economic Development
- Department of Environmental Conservation
- Department of Fish & Game

- Department of Transportation & Public Facilities
- U.S. Army Corps of Engineers
- U.S. Bureau of Land Management
- U.S. Coast Guard
- U.S. Environmental Protection Agency
- U.S. Fish and Wildlife Service
- U.S. National Park Service
- U.S. National Oceanic and Atmospheric Administration - National Marine Fisheries Service

Three comments were received:

Comment: The Department of Transportation and Public Facilities (DOT&PF) submitted a comment on October 19, 2022, that notes the lease application did not include a defined legal description, and therefore, is “likely not sufficient for a DMLW leasing authorization and may present complications for DOT&PF harbor management if authorized as a revocable-for-cause lease.” DOT&PF requests that they be given an opportunity to review ADL 234089 with defined outer boundaries once they are proposed.

Response: SCRO acknowledges the comment from DOT&PF. In accordance with AS 38.04.045, this short-term land lease does not require a survey, and GPS coordinates submitted by the applicant are sufficient. The following seven GPS points were submitted by the applicant which clearly define the site boundaries:



If authorized, the proposed lease will be managed by DNR and exist within the ILMA ADL 222127 currently managed by DOTP&F. To successfully co-manage, SCRO requests that DOTP&F identify and inform SCRO of the specific issues that need to be addressed in order to best mitigate complications with harbor management.

Comment: Public Access Assertion and Defense (PAAD) submitted a comment on October 13, 2022 that reiterated that while this site area has been avulsed, “it is still subject to public trust doctrine” and therefore, available for use by the public. If there are safety concerns with public use the region (SCRO) will need to submit a formal closure document.

Response: SCRO acknowledges this comment and CRS will be informed of this requirement through this PD. CRS has confirmed that this authorization will not restrict daily public access to the water. However, at times the proposed lease operations may pose a public safety concern due to the operation of machinery at the lease site. To maximize public safety and ensure that the public is not in the immediate area of operating machinery, Public Access Stipulation #19 states that CRS may allow restriction of public access for a specific period of time, but restriction must be specifically authorized in writing by the Authorized Officer (AO). The lessee must contact the AO in advance for approval.

Comment: The Alaska Department of Fish and Game (ADF&G) commented on October 25, 2022, that while they have no objections to the issuance of the proposed lease, CRS will need to apply for an ADF&G Fish Habitat Permit if any new activity, changes, or expansion below ordinary high water mark occur.

Response: SCRO acknowledges this comment and CRS will be informed of this requirement through this PD.

Lease Discussion:

On September 14, 2022, SCRO received a completed application and development plan for a land lease serialized ADL 234089 for the purpose of maintaining a pre-existing dock area. The lease site boundary is located at the end of Boat Harbor Road and Airport Lane in Ninilchik, Alaska. The proposed lease site boundary is also located within an ILMA authorized under DOTP&F and serialized ADL 222127. Previously, DOTP&F authorized a permit for CRS’s current operations and dock maintenance. However, DOTP&F and SCRO have determined that CRS’s operations are more appropriately managed by DNR under a short-term 10-year lease. The lease would be processed and exist within the ILMA footprint with no changes to ADL 222127. SCRO has concurrence from DOTP&F that SCRO will authorize and manage the proposed lease.

CRS is an established Alaska based company that harvests, purchases, processes, and delivers local high-quality Alaskan seafood in and out of state. An authorization with SCRO to continue to operate and maintain this dock for the unloading of fish from moored vessels during the salmon

season will ensure that CRS can carry out its company mission and support its seafood purchasing and processing business.

The existing improvements are described as:

- A 45'x19' dock
- Dock crane powered by a portable generator and hydraulic skid that are removed and stored offsite when not actively in use
- 40'x8' portable metal storage container for onsite storage
- 9,073 square foot graveled staging area

Approximately 4 employees of CRS will operate the dock and unload fish at the site. When the site is in active use during salmon season, trucks will temporarily be at the site to haul unprocessed fish to the CRS processing site (located off the proposed lease site). There is no long-term parking or storage. Maintenance operations and as needed repairs to the dock and crane are occasionally performed by employees or third-party contractors.

The proposed lease will be subject to the terms of SCRO's standard lease document (available for review upon request) and any stipulations based, in part, upon the following considerations.

Development Plan:

The Development Plan (DP) attached to this decision (Attachment A) and dated September 14, 2022, is under consideration by SCRO. 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 SCRO before any construction, deconstruction, replacement of infrastructure, or change in activity. SCRO reserves the right to require additional agency review and/or public notice for changes that are deemed by SCRO to be beyond the scope of this decision.

Hazardous Materials and Potential Contaminants:

There are no hazardous materials or potential contaminants of note for this leasehold.

The use and storage 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, and must be removed from the lease site and disposed of in accordance with state and federal law.

Lease Performance Guaranty (bonding):

In accordance with AS 38.05.035 and AS 38.05.860, CRS will be required to submit a performance guaranty for the lease site.

- **\$1,000.00 Performance Bond:** This bond will remain in place for the life of the proposed lease. The bond amount is based upon the level of development, amounts of hazardous material and/or substances on site, and the perceived liability to the State. This bond will be used to ensure the applicant's compliance with the terms and conditions of the lease issued for their project. This bond amount will be subject to periodic adjustments and may be adjusted upon approval of any amendments, assignments, reappraisals, changes in the DP, changes in the activities conducted, or changes in the performance of operations conducted on the authorized premises, and as a result of any violations to one or more of the authorizations associated with this project.
- **Reclamation Bond:** SCRO is reserving the right to require a reclamation bond in the event of noncompliance issues during the term of the lease or near the end of the life of the project.

Insurance:

CRS will be required to submit proof of liability insurance to SCRO, with the State of Alaska listed as a "NAMED" insured party. CRS will be responsible for maintaining such insurance throughout the term of the lease.

Survey:

In accordance with AS 38.04.045, this short-term land lease does not require a survey. However, the State of Alaska reserves the right to require one in the future, should the need arise due to changes in statutes or increased use of the area. The applicant has submitted the necessary GPS coordinate points for the leased area.

Compensation and Appraisal:

A Minimum Rent Determination for this leasehold was completed on May 4, 2023, and the proposed lease annual fee will be set at \$1,000.00. Furthermore, in accordance with AS 38.05.105, the proposed lease will be subject to reappraisal at five-year intervals after the issuance of the proposed authorization. If an appraisal is conducted to determine the fair market value of the lease site, the applicant will be required to pay the appraised amount and the \$1,000.00 annual fee will no longer be an option. The appraisal cost will be borne by the applicant. The applicant acknowledges the responsibility to cover the difference between the proposed fee and the final determined fee in the event that the appraised amount is altered. The parcel may need to have an approved Alaska State Land Survey or Alaska Tidelands Survey to accomplish the appraisal. If a survey is required the cost will be incurred by the applicant. The parcel may need to have an approved Alaska State Land Survey or Alaska Tidelands Survey completed to accomplish the appraisal.

Subleasing:

Subleasing is permissible through AS 38.05.095, if the proposed lease is approved. A sublease is defined as improvements not owned by the lessee that are located within the leasehold on the land or located on structures owned by the lessee. A sublease pertaining to the proposed lease includes but is not limited to, user agreements, license agreements, communication site agreements, or any contracts between the lessee and other commercial entities. All potential subleases must first be approved in writing by SCRO. Depending on the activity of any potential subleases, SCRO is reserving the right to reevaluate the need for further agency review and/or public notice before making a determination on the appropriateness of the proposed sublease. Sublease compensation to the State will be determined by SCRO according to AS 38.05.073(m), under the authority of AS 38.05.075(a) Leasing Procedures. In any case, the sublease fee for commercial activities will not be less than 25% of the annual fee paid to the leaseholder by the sublessee.

Assignment of Lease:

The proposed lease, if issued, may be transferred or assigned to another individual or corporation only with written approval from the DMLW. A lease will not be assigned to an entity if that entity does not meet the statutory requirements of the lease, or if the lessee is considered not to be in “good standing” with DMLW or any other agency authorization. DMLW reserves the right to amend the terms of the lease prior to assignment.

Reclamation:

In accordance with AS 38.05.090(b), all lessees must restore their lease site to a “good and marketable condition” within 120 days after termination of the lease. What level of reclamation constitutes as being “good and marketable” is at the discretion of SCRO.

Public Notice of the Preliminary Decision:

Pursuant to AS 38.05.945, this PD will be advertised for a 30-day public comment period. Notice will be posted on the Alaska Online Public Notice System at <http://aws.state.ak.us/OnlinePublicNotices/Default.aspx> and the post offices located in Ninilchik, Anchor Point, and Clam Gulch. Courtesy notices will also be mailed or emailed to neighboring property owners, permit/lease holders, and other interested parties on December 5, 2023 for a 30-day public comment period.

Comment(s):

This decision is subject to both public and agency comments, and all comments received by the comment deadline will be considered in the FFD. Pursuant to 11 AAC 02.010(d), DNR is restricting appeal rights to those who meaningfully participate as well as the applicant.

**Written comments about this project must be received in this office no later than
11:59 PM on January 5, 2024 to be considered.**

To submit comments, please choose one of the following methods:

Postal: Department of Natural Resources
Division of Mining, Land and Water
Southcentral Region Office
ATTN: Emily Gettis
550 West 7th Avenue, Suite 900C
Anchorage, AK 99501-3577
Email: emily.gettis@alaska.gov
Fax: (907) 269-8619

Questions about the lease portion of this project can be directed to Emily Gettis at (907) 269-8619.

If public comments result in significant changes to the Preliminary Decision, additional public notice will be given. To be eligible to appeal the Final Finding and Decision, a person must provide written comments during the Preliminary Decision comment period per AS 38.05.035(i)-(m).

Recommendation:

DMLW has completed a review of the information provided by the applicant, examined the relevant land management documents, and has found that this project is consistent with all applicable statutes and regulations. SCRO considered three criteria to determine if this project provided the best interest to the State and the development and enjoyment of its natural resources. The criteria include direct economic benefit to the State, indirect economic benefit to the State, and encouragement of the development of the State's resources. This authorization provides a direct economic benefit to the State with the collection of fees for ADL 234089 and an indirect economic benefit through the encouragement and development of the State's resources. The authorization of this lease is in the State's best interest as it will enhance the local economy and continue to provide seasonal employment in Ninilchik. The maintenance and continued use of this small dock harbor ensures that CRS can continue fish processing operations that benefit the surrounding communities and lower 48 with Alaskan goods and services. It is recommended that SCRO issue a 10-year lease to CRS.



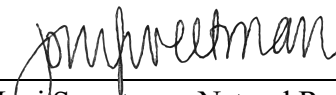
12/04/2023

Emily Gettis, Natural Resource Specialist

Date

Preliminary Decision:

It is the determination of the Division of Mining, Land, and Water that it may be in the State's best interest to issue a Tidelands Lease for 10 years to CRS, as described above. Upon authorization of the lease, the applicant will be required to pay the annual lease fee of \$1,000.00, submit a \$1,000.00 performance bond, and provide proof of liability insurance. This Preliminary Decision shall now proceed to public notice. If no appeal is filed by the appeal deadline, this decision goes into effect on the 31st day after issuance, and the lease term must start within one year of effective date of this decision. However, if the applicant does not submit the required deliverables within one year of the effective date of this decision, the Southcentral Regional Land Office may choose to rescind this decision.



12/04/2023

Joni Sweetman, Natural Resource Manager 2

Date

Division of Mining, Land, and Water, Southcentral Regional Office

Attachments

Attachment A – Development Plan

Attachment B – Location Map

Attachment A Development Plan



COPPER RIVER SEAFOODS

Main Administrative Office
1118 East 5th Avenue - Anchorage, AK 99501
Phone: (907) 522-7806 - (888) 622-1197 - Fax: (907) 274-0348
www.CopperRiverSeafoods.com

Development Plan Narrative – Project Description

Copper River Seafoods, Inc. has been operating on DNR parcel ID 15709014 under permit (ADA-08767) with the State of Alaska Department of Transportation and Public Facilities for 10 plus years. There are no proposed changes to the past, present or future use of this parcel.

The proposed activity is to continue operation and maintenance of a dock for the unloading of fish from moored vessels during the 1 to 2-month salmon season, packing and transportation of fish for off-premises processing, placement of temporary storage container(s), related vehicle and equipment, all in support of seafood purchasing and processing business. The existing improvements are a 45'x19' dock, dock crane, 40'x8' portable storage container and 9,928 sq ft graveled staging area.

Legal Description:

Parcel B, Ninilchik Harbor, 9,928 sq ft
Meridian Seward, Township 1S, Range 14W, Section 27, Municipality Homer
Recording District

Terrain/ground cover:

Existing graveled surface area at the end of the access road

Access:

Sterling Hwy MP135 to Valley Ave to Airport Ln which is the existing access road

Building and other structures:

There is one 40'x8' metal portable container used for storage onsite

Power source:

There is no power supplied or planned for

Waste types, waste sources, and disposal methods.

Waste is not generated onsite

Hazardous substances:

There is a portable generator and hydraulic skid that powers the dock crane which is removed and stored offsite when not in use

Water supply:

There is no water supplied or planned for

Parking areas and storage areas:

There is no long-term parking or storage. During the salmon season, trucks are onsite temporarily to haul un-processed fish to a processing plant located offsite

Number of people using the site:

Approximately 4 people operate the dock when unloading fish and 1 is a supervisor. Clients do not use the site.

Maintenance and operations:

Occasional maintenance and repairs of the dock and crane are performed by company employees and/or third-party contractors

Closure/reclamation plan:

N/A

CORDOVA PLANT

P.O. Box 168 / 300 Cannery Row - Cordova, AK 99674
Phone: (907) 424-3721 - (888) 622-1197
Fax: (907) 424-7435

ANCHORAGE PLANT

1400 East 1st Avenue - Anchorage, AK 99501

NAKNEK PLANT

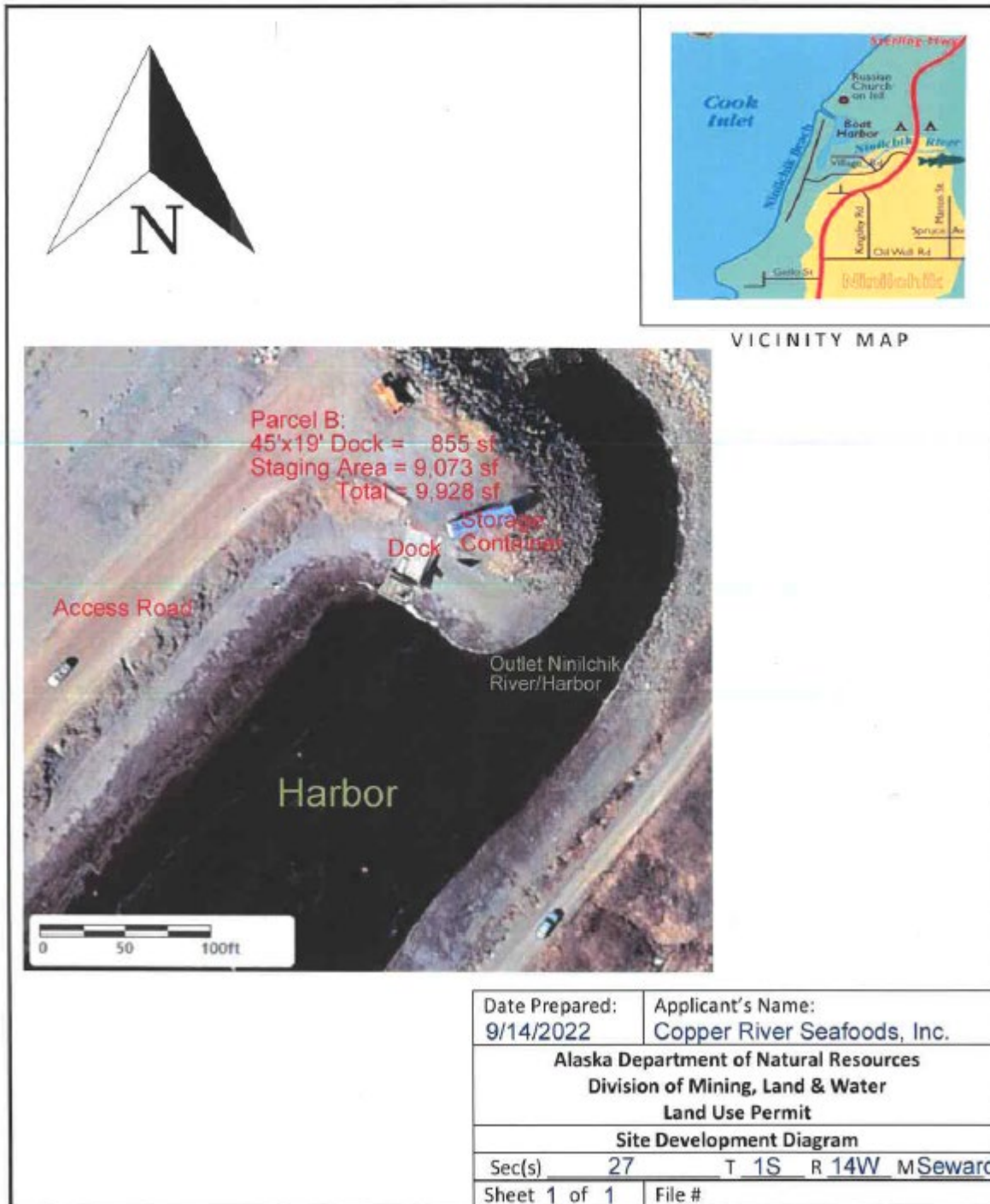
0.5 Peninsula Hwy - Nainok, AK 99633

TOGIAK PLANT

P.O. Box 110 - Togiak, AK 99678

Attachment B Location Map

Site Development Diagram



Date Prepared: 9/14/2022	Applicant's Name: Copper River Seafoods, Inc.
Alaska Department of Natural Resources Division of Mining, Land & Water Land Use Permit	
Site Development Diagram	
Sec(s) 27	T 1S R 14W M Seward
Sheet 1 of 1	File #