

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

# PRELIMINARY DECISION

**ADL 234119**

**Chenega Corporation: Eshamy Bay**

Application for Lease

AS 38.05.075(c)

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 **11:59PM MARCH 15, 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:**

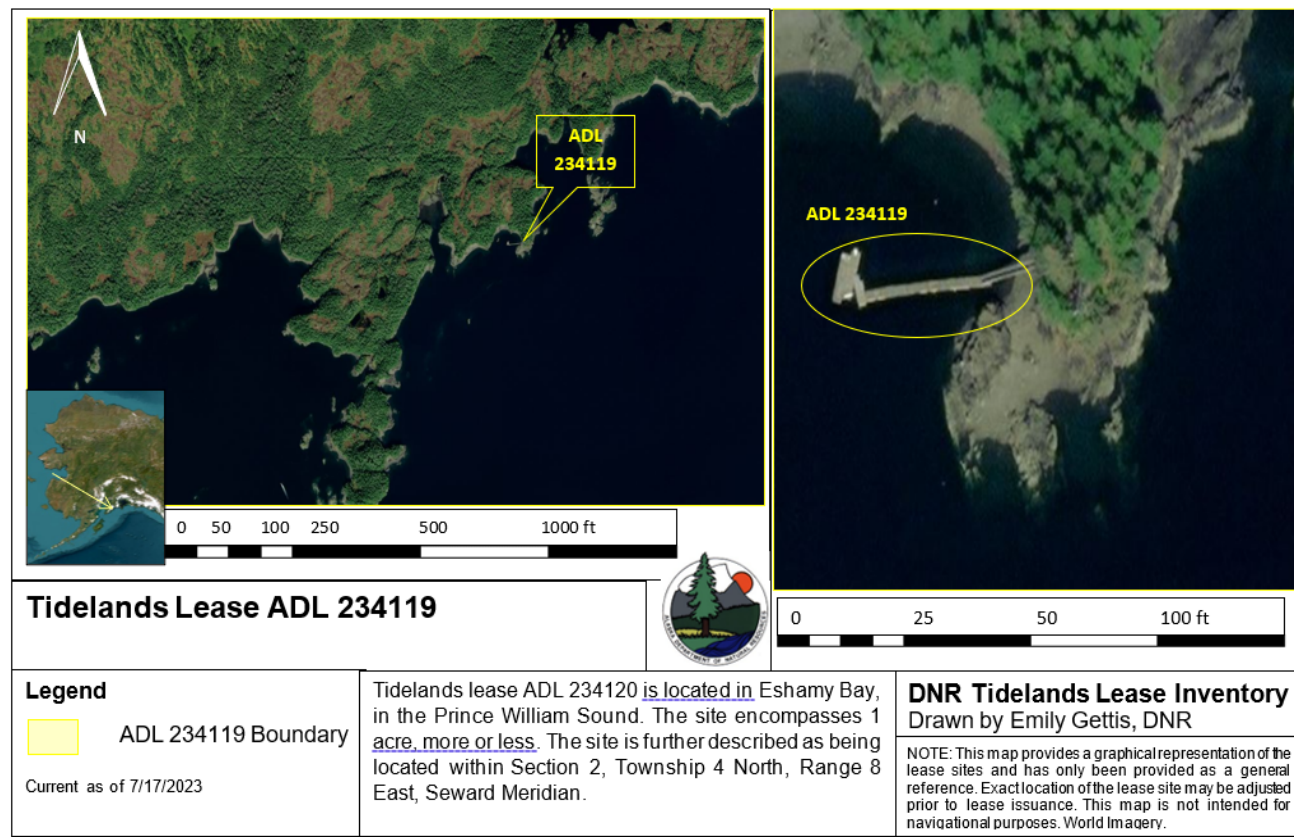
The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Regional Land Office (SCRO) has received a request from the Jake Maxwell dba Chenega Corporation site location Eshamy Bay (CC) to lease 1.0 acre of land, more or less, for a 55-year tideland lease for the purpose of authorizing the continued commercial use and maintenance of a floating dock and gangway for access to privately owned upland property located in Eshamy Bay, Alaska of Prince William Sound. The location of the project area is further described as being within Section 2, Township 4 North, Range 8 East, Seward Meridian, Alaska. CC is proposing to use this site for commercial recreation, transportation, and access to the applicant's privately owned uplands.

SCRO is considering the issuance of a 30-year tideland lease to CC for the construction, operation, and maintenance of a floating dock and gangway to access the privately owned upland property. SCRO would issue an Entry Authorization (EA) for construction of the lease site prior to lease issuance.

### **Scope of Review:**

The scope of this decision is to determine if it is in the State's best interest to issue CC an authorization to the state-owned tidelands to access their privately owned uplands.

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 38.05.075(c) Leasing Procedures; and AS 38.05.945 Notice.

The authority to execute the PD, FFD, the EA, and the lease has been delegated to the Regional Managers of 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 2007 Prince William Sound Area Plan (PWSAP), and other classification references described herein, and the casefile for the application serialized by DNR as ADL 234119.

### **Legal Description, Location, and Geographical Features:**

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

- **Legal description:** NE 1/4 of Section 2, Township 4 North, Range 8 East, Seward Meridian, Alaska
- **Geographical location:** Eshamy Bay, Prince William Sound
- **Approximate Lat/Long:** 60° 28.2066' N, 148° 0.0671' W
- **Area geographical features:** Rocky shoreline mixed with sandy beaches and densely forested area in western Prince William Sound
- **Existing surveys:** No
- **Municipality/Borough:** Chugach Census Area, Unorganized
- **Native Corporations/Federally Recognized Tribes:** Chenega Corporation
- **Size:** 1.0 acre, more or less

### **Title:**

SCRO requested a title report from DMLW's Realty Services Section on January 10, 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:**

There are no known third-party interests at this time.

### **Classification and Planning:**

The project area is subject to the 2007 Prince William Sound Area Plan (PWSAP), Chenega, Management Unit 13A: Eshamy Lagoon and Jackpot Bay (tidelands). The classification for the proposed lease is Habitat and Harvest, Public Recreation, and Shoreline development.

Chapter 2 of the PWSAP outlines the specific designations for the proposed lease area. The four goals of Fish and Wildlife Habitat and Harvest areas are to maintain publicly owned habitat base, ensure access to public lands and waters, mitigate habitat loss, and contribute to economic diversity. The goal for Shoreline Development is to provide for water-development and water-related uses. This area has the highest access to recreational opportunities and draws in both out-of-state and in-state recreators. Public Recreation goals will be reached as the proposed lease will not displace public use but create and encourage commercial recreation and access to the upland lodging.

This existing dock facility was reconfigured by CC in 2020 and is currently used privately to access the adjacent upland property owned by CC. This proposed lease would create the access necessary to promote responsible public recreation to a high value and use area by providing access to

recreation facilities, the adjacent upland lodge owned by CC. The PWSAP describes Eshamy Lagoon as the most important sport-fishing site in western Prince William Sound that is a high use area.

This dock facility will also ensure public access to water that will enhance responsible public use and enjoyment of fish and wildlife resources. CC has confirmed that no action at the proposed lease site will inhibit public access to navigable waters. This project will not inhibit shoreline development since the dock facility will provide public access to the adjacent water body.

No conflicts with the management intent of the area plan were identified. The scope of this project is determined to be consistent with the management intent of the PWSAP for the specified project area.

### **Traditional Use Findings:**

An additional consideration is required under AS 38.05.830 for the sale, lease or other disposal of land not located within an organized borough. The consideration must include the effect that the disposal may have on the density of the population in the vicinity, and the potential for conflicts with traditional uses that may result from the disposal. If necessary, the commissioner will develop a plan to resolve or mitigate conflicts.

The proposed lease parcel is not located within an organized borough. The Chenega Management Unit coastal area is a high use subsistence area and is therefore a known area for traditional use. Residents of Chenega Bay rely on harvesting by commercial purse seining and resources such as salmon, waterfowl, and seals. The proposed action of this lease site will not inhibit the population from access to subsistence practices and will not be a potential for conflict. The upkeep and maintenance of this dock by CC will increase access and safety for users. Additional traditional uses may be identified during the public notice period. If further traditional uses become known, they will be discussed in the final finding and decision.

### **Access:**

CC will access the existing dock facility by boat from Whittier or Valdez, or by float plane. There is a gangway that extends from an abutment on the privately owned upland property to the floating dock. The upland property is owned by the applicant, CC.

### **Access Along Navigable and Public Waters:**

Nearly all shore and tide lands 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. This lease site will be subject to a 50-foot public access easement seaward of the line of mean high water. A final determination of the easement will be determined by an approved survey of the leasehold.

**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 March 2, 2023. The deadline for agency comments was March 21, 2023.

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 DMLW Statewide Abatement of Impaired Land 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

A total of one agency comment was received during the review period and is summarized below:

**Comment:** On March 21, 2023, the Alaska Department of Fish and Game (ADF&G) responded that they have no objections to the authorization proposed lease action, however ADF&G did provide the following guidance:

- 1) The lease area is within marine habitat used by multiple marine mammal species for foraging and travel. While use of the lease area may temporarily displace animals, any impacts would be temporary. There are no nearby pinniped haul outs, designated critical habitat areas or known biologically important area for cetaceans.
- 2) To help reduce known bear problems in the area, ADF&G would like to see a good plan developed for storage of food and waste/trash onsite, and after it gets hauled away. Please see the following recommendations and guidance:
  - a) All fuel, trash, food and any other potential wildlife attractant (to include any petroleum-based product) should be properly stored to prevent conflicts with wildlife. The use of bear resistant containers, electric fencing, and the maintenance of a clean site will reduce the likelihood of nuisance encounters with bears and other wildlife.
  - b) The complete removal of all food, trash or fuel when the site is unoccupied will further reduce risks.

More information about staying safe in bear country and avoiding negative interactions with bears including bear resistant containers and electric fences can be found on ADF&G's website (<https://www.adfg.alaska.gov/index.cfm?adfg=livingwithbears.main>). The applicant should report any nuisance wildlife interactions to ADF&G Division of Wildlife Conservation at [website: https://www.adfg.alaska.gov/index.cfm?adfg=reportwildlifeencounter.main](https://www.adfg.alaska.gov/index.cfm?adfg=reportwildlifeencounter.main).

**Response:** SCRO acknowledges the comment and suggests to CC that they mitigate human-caused impacts to bears such as properly storing and disposing of wildlife attractants. CC will report any nuisance wildlife interactions to ADF&G Division of Wildlife Conservation.

### **Lease Discussion:**

The applicant, CC, submitted an application for a state tideland lease serialized as ADL 234119 July 17, 2022, for the continued commercial use and maintenance of a floating dock and gangway for access to privately owned upland property located in Eshamy Bay, Alaska of Prince William Sound. The dock facility covers approximately 1,800 square feet of tide and submerged lands. The existing gangway is 320 square feet. The total facility structures consist of:

- One 4-foot by 80-foot gangway.
- Four 40-foot by 10-foot floating dock segments.
  - Floating dock segments are anchored with four 16-inch diameter steel piles.
  - Floats are constructed of foam-filled high-density polyethylene (HDPE) pipe floatation units, heavy-timber creosote pressure-treated glue laminated walers (longitudinal external framing members), and solid-timber Ammoniacal Copper Zinc Arsenate, or ACZA, pressure treated decking.

- All timber elements are supported above water by floatation units.
- One 20-foot by 10-foot dock segment.

The sites primary use would be for transportation and to access the upland lodging.

The application submitted by CC requested a 55-year lease. However, due to the location and potential impacts on the surrounding area, SCRO recommends the issuance of a 30-year lease issued under statutory authority AS 38.05.075(c). This shorter lease term would be in the State's best interest, allowing DNR, ADF&G and other agencies an opportunity to reevaluate any impacts on the surrounding area.

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 October, 17, 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:**

Heating oil, fuel and engine oil required for equipment maintenance and operation of the upland property would be transported by boat, unloaded at the dock, and stored at designated upland storage areas in standard transport drums or containers.

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, CC will be required to submit one performance guaranty for the lease site.

- **\$3,000.00 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 due to noncompliance issues during the term of the lease or near the end of the life of the project.

### **Insurance:**

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

### **Survey:**

In accordance with AS 38.04.045, CC must complete an approved survey according to the requirements and standards of DMLW's Survey Section prior to lease issuance. The draft survey must be submitted for review to the Survey Section within **one year** of issuance of the survey instructions. If the submitted survey is accepted by DMLW, the measurements identified will be used to accurately calculate the total acreage. The survey must depict the leased boundaries.

### **Entry Authorization:**

SCRO is proposing to authorize CC entry onto state land through the issuance of an EA while they are completing the required survey for the lease site. The proposed EA would be issued after the FFD goes into effect. The effective date of the EA will be the start of the lease term length.

### **Compensation and Appraisal:**

A Minimum Rent Determination for this leasehold was completed on February 21, 2023. In accordance with AS 38.05.840(b), CC will not be required to provide an appraisal for this lease site before lease issuance, and the proposed EA and lease annual fee will be \$1,000.00. Furthermore, in accordance with AS 38.05.105, the proposed EA and lease will be subject to reappraisal at five-year intervals after the issuance of the proposed authorization.

### **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 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 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 Whittier, Alaska. Courtesy notices will also be mailed or emailed to neighboring property owners, permit/lease holders, and other interested parties on February 15, 2024, 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. Only those who comment and the applicant have the right to appeal the FFD.

**Written comments about this project must be received in this office no later than  
11:59 PM on March 15, 2024 to be considered.**

To submit comments or project proposals, 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 7<sup>th</sup> Avenue, Suite 900C  
Anchorage, AK 99501-3577  
Email: emily.gettis@alaska.gov  
Fax: (907) 269-8913

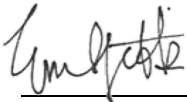
Questions about the lease portion of this project can be directed to Emily Gettis at (907) 269-8619.

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).

*Signature page follows*

**Recommendation:**

SCRO 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 234032 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 continue to provide development and use of State resources to help provide a safe docking area for the applicant to access privately owned uplands. It is recommended that SCRO issue a 30-year lease to CC.



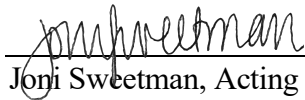
2/15/2024

Emily Gettis Natural Resource Specialist 2

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 30 years to CC, 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 \$3,000.00 performance bond, provide proof of liability insurance, and submit an approved draft survey. This Preliminary Decision shall now proceed to public notice.



2/15/2024

Joni Sweetman, Acting Regional Manager

Date

Division of Mining, Land and Water, Southcentral Regional Office

**Attachments**

Attachment A – Development Plan

Attachment B – Location Map

# Attachment A Development Plan

10/17/2022

PND #: 211163

## Chenega Corporation, Eshamy Bay Development Plan

Chenega Corporation proposes operation of an existing dock facility for commercial recreation and lodging access at Eshamy Bay, Prince William Sound. The existing dock facility was reconfigured in 2020 and is currently used privately by Chenega Corporation. The uplands adjacent to the dock facility are owned by Chenega Corporation.

Activities involved in the commercial operation of the dock would include transportation and access to the upland property.

Chenega Corporation wishes to lease from the state that portion of tide/submerged lands adjacent to and seaward of Tract W of ANCSA Section 14(c) Tracts A through X; Subdivision of U.S.S 1728 P.L. 92-203 (85 Stat. 688, 702, 703) totaling approximately 0.90 acres.

Latitude	Longitude	USGS Quad
60.4701° N	148.0004° W	Seward B-3

Section(s)	Township	Range	Meridian
2	004N	008E	Seward

### Terrain/ground cover

Submerged and tide lands at the site are mixed coastal bedrock and sand/gravel substrate. Ground cover is primarily composed of various beach kelps and green algae. Patchy eelgrass (*Zostera marina*) is present at approximately MLLW extending seaward. The existing dock facility, excluding the gangway, covers approximately 1,800 square feet of tide and submerged lands.

### Access

Eshamy Bay dock is in western Prince William Sound near the northwest entrance of Knight Island Passage and can be accessed by boat from Whittier or Valdez, or by float plane. A gangway extends from an abutment on the upland property to the floating dock.

### Buildings and other structures

The dock facility consists of a gangway, four 40' x 10' floating dock segments, and one 20' x 10' dock segment. Floating dock segments are anchored with four 16" diameter steel piles. The floats are constructed of foam-filled HDPE pipe flotation units, heavy-timber creosote pressure-treated glue-laminated walers (longitudinal external framing members), and solid-timber ACZA pressure treated decking. All timber elements are supported above water by the flotation units.

# Attachment A Development Plan

10/17/2022

PND #: 211163

## Power source

Power is not supplied to the floating dock.

## Waste types, waste sources, and disposal methods

Waste generated at the lodge would include kitchen waste and used engine oil. Waste from the lodge would be loaded onto boats and removed from the property to be properly disposed.

## Hazardous substances

Heating oil, fuel, and engine oil required for equipment maintenance and operation of the upland property would be transported by boat, unloaded at the dock, and stored at designated upland storage areas in standard transport drums or containers.

## Water supply

Water is not supplied to the floating dock.

## Parking areas and storage areas

Float planes and small vessels would be moored at the floating dock.

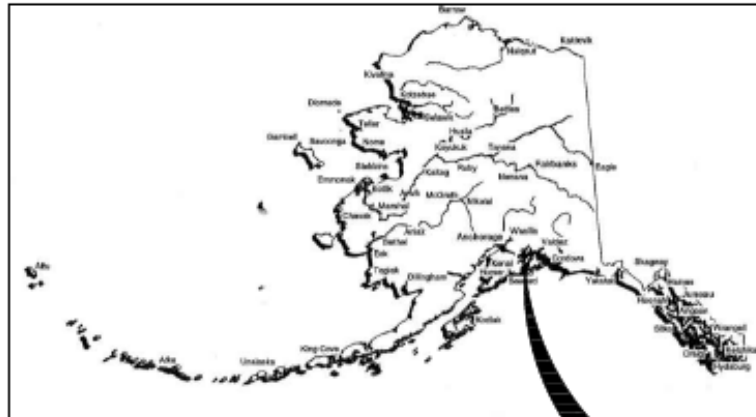
## Number of people using the site

Three employees would operate the lodge: one supervisor/manager, one cook, and one housekeeper/server. The lodge would serve an estimated maximum of twelve guests at a time. All guests and employees would use the floating dock for access to the lodge.

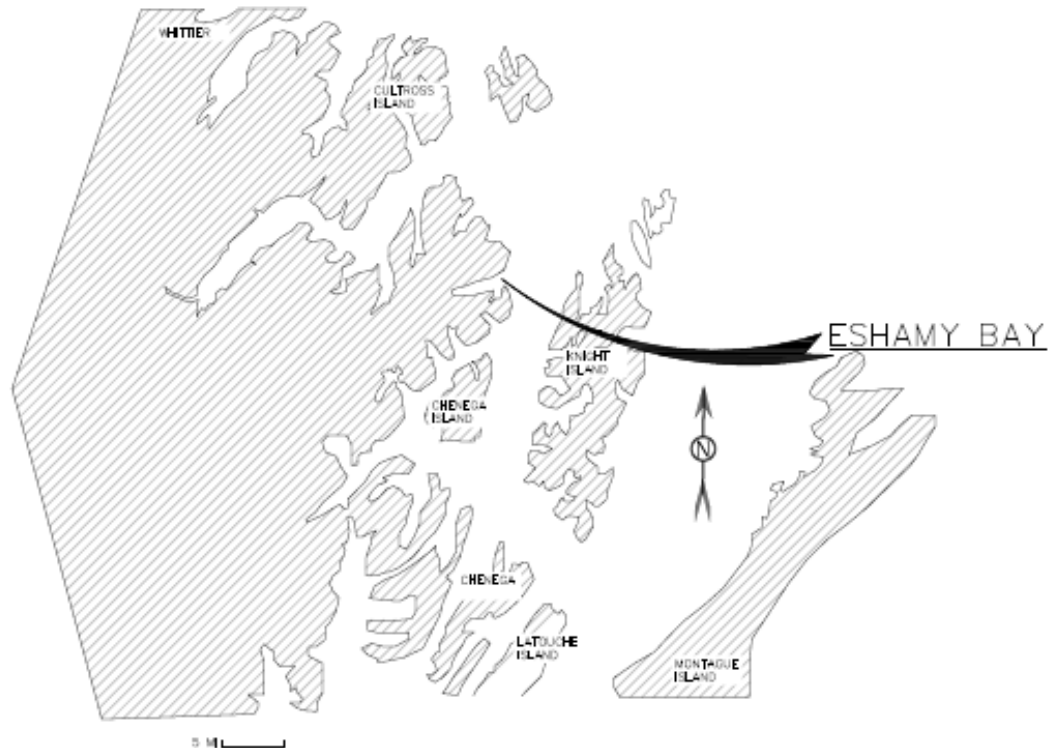
## Maintenance and operations

On-site staff would clean the dock and monitor it for damage. Chenega Corporation would contract professional engineers to inspect the dock as needed. If significant repairs to the dock are needed, contractors would be hired to perform the work.

## Attachment B Location Map



PROJECT VICINITY



PURPOSE:  
TIDAL LEASE APPLICATION  
STN 9454691, HERRING PT, AK  
HTL = 15.41'  
MHW = 11.02'  
MLLW = 0.0'  
ADJACENT PROPERTY OWNERS:  
CHENEGA CORP.

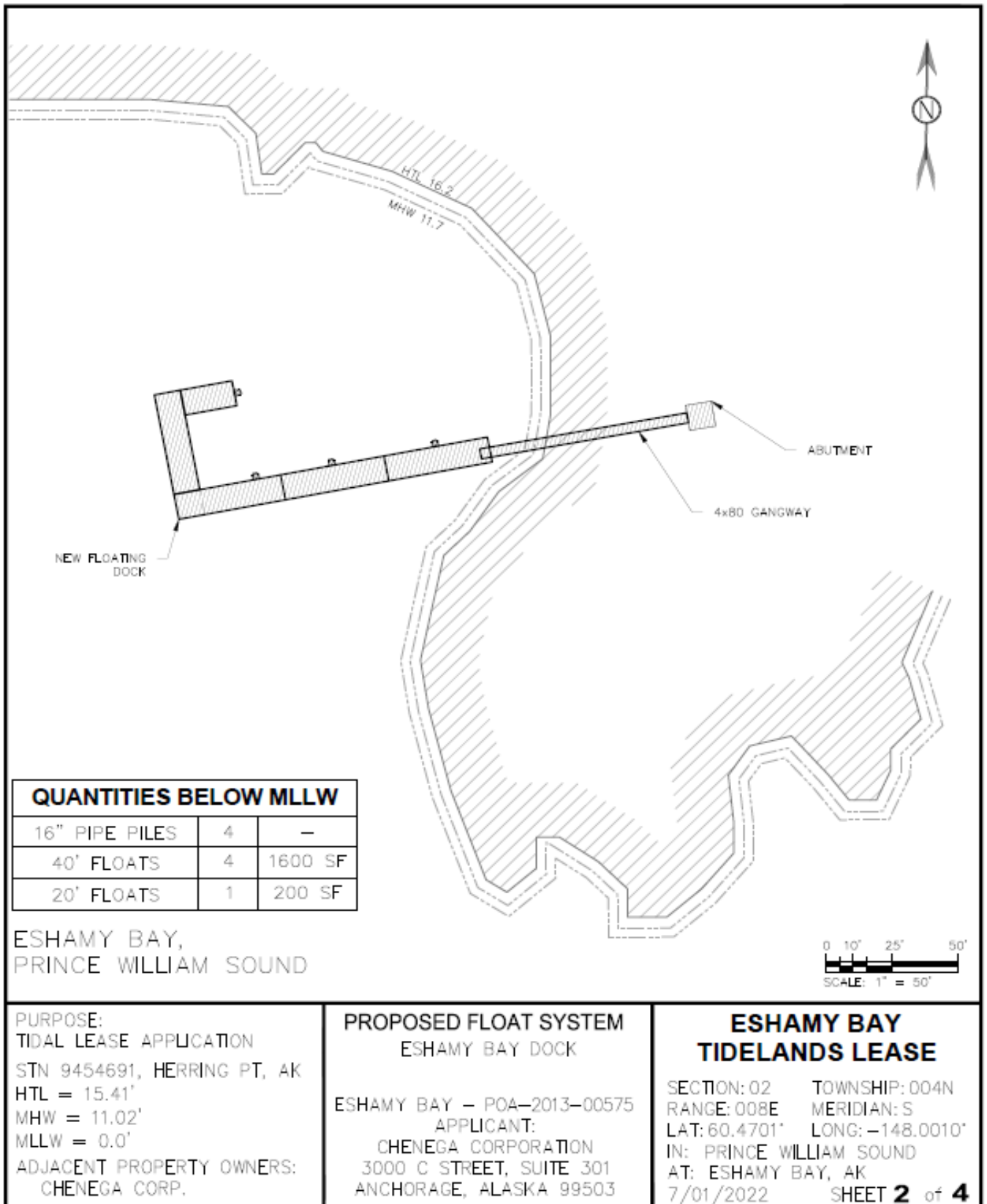
### VICINITY MAP

ESHAMY BAY – POA-2013-00575  
APPLICANT:  
CHENEGA CORPORATION  
3000 C STREET, SUITE 301  
ANCHORAGE, ALASKA 99503

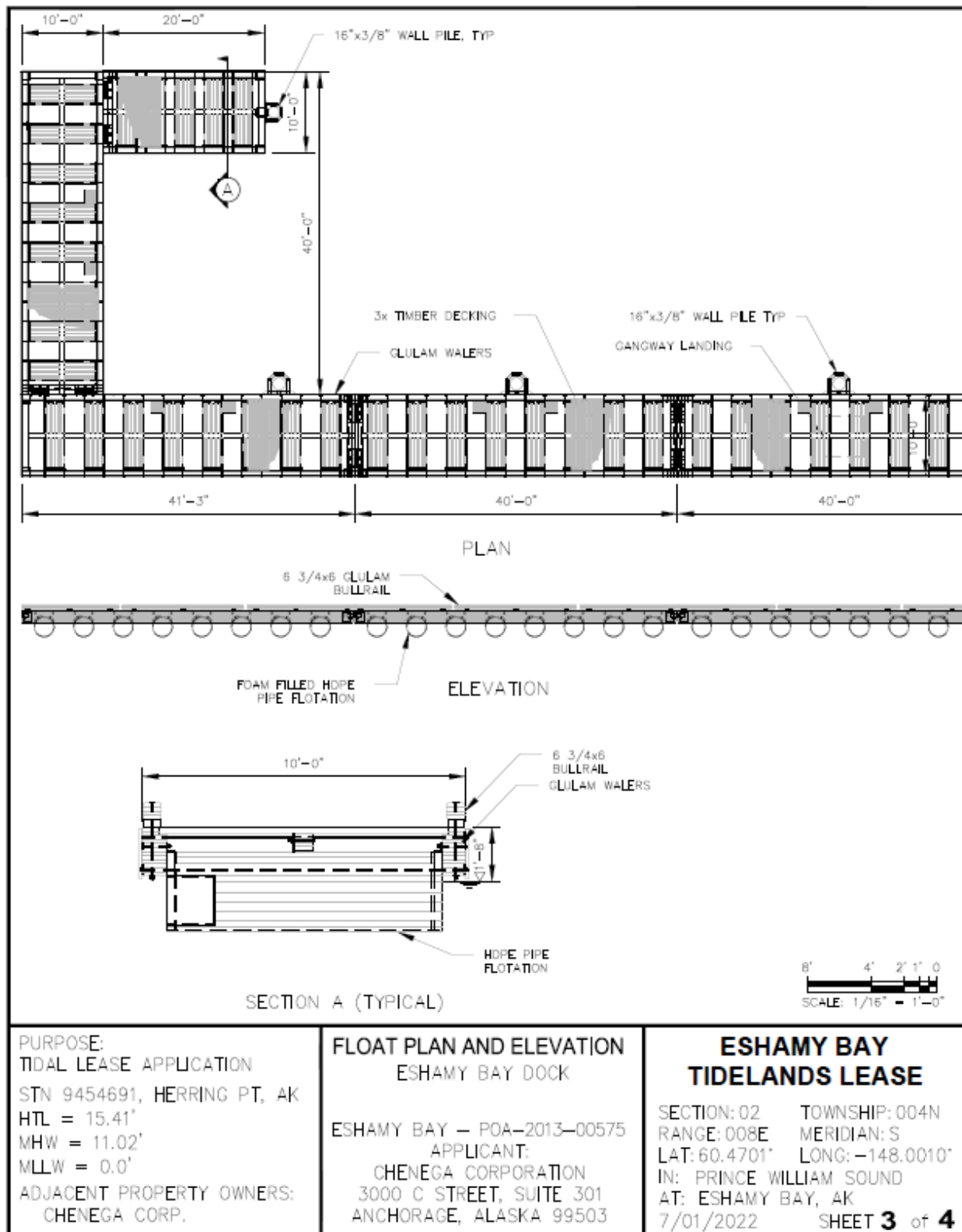
### ESHAMY BAY TIDELANDS LEASE

SECTION: 02      TOWNSHIP: 004N  
RANGE: 008E      MERIDIAN: S  
LAT: 60.4701°      LONG: -148.0010°  
IN: PRINCE WILLIAM SOUND  
AT: ESHAMY BAY, AK  
7/01/2022      SHEET **1** of **4**

## Attachment B Location Map



## Attachment B Location Map





# Attachment B Location Map

