

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

FINAL FINDING AND DECISION

of a
Tideland Conveyance in the City and Borough of Sitka
ADL 109021 – City and Borough of Sitka
AS 38.05.035(e), AS 38.05.825

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) dated April 7, 2020, and Amended Preliminary Decision dated August 3, 2021. The PD and Amended PD (attached) have both been distributed for public comment pursuant to AS 38.05.945 Notice.

I. Recommended Actions

The State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) recommends conveying 29.97 acres, more or less, of State-owned tide and submerged lands within Sitka Channel to the City and Borough of Sitka (CBS) pursuant to *AS 38.05.825 Conveyance of tide and submerged land to municipalities*.

II. Authority

DNR has the authority under *AS 38.05.825 Conveyance of Tide and Submerged Land to Municipalities* to convey State-owned tide and submerged lands if, on preparation and issuance of a written finding, it is determined to be in the best interest of the State, as required by *AS 38.05.035(e) Powers and Duties of the Director*. The conveyed tide and submerged lands suitable for occupation and development must be conveyed when requested by the municipality unless it is found that public interest in retaining state ownership clearly outweighs municipal interest. Lastly, the subject tide and submerged lands must: be within the boundaries of the municipality; have proposed uses that do not unreasonably interfere with navigation or public access; be applied for conveyance by the municipality; not be subject to a shore fisheries lease under *AS 38.05.082 Leases for shore fisheries development; account*; have a land classification consistent with or compatible with the proposed use; and be required for a public or private development approved by the municipality.

III. Public Participation and Input

Pursuant to *AS 38.05.945 Notice*, public notice inviting comment on the PD and Amended PD for the proposed action was published and distributed in the following manner:

- Preliminary Decision dated April 7, 2020 posted on the State of Alaska Online Public Notice website from April 7, 2020 through May 11, 2020;
- Amended Preliminary Decision dated August 3, 2021 posted on the State of Alaska Online Public Notice website from August 4, 2021 through September 8, 2021;
- Notice mailed and emailed to CBS per *AS 38.05.945(c)(1)*;
- Mailed to the postmaster at the Sitka post office with a request to post for 30 days, per *AS 38.05.945(c)(4)*;

Final Finding and Decision

City and Borough of Sitka – ADL 109021

Page 2 of 5

- Mailed and emailed to the Sealaska Regional Corporation per AS 38.05.945(c)(2)-(3);
- Mailed and emailed to Federally Recognized Tribes and Native Village Corporations;
 - Federally Recognized Tribes
 - Sitka Tribe of Alaska
 - Central Council of Tlingit and Haida Indian Tribes of Alaska
 - Village Corporations
 - Shee Atika
- Mailed to adjacent landowners United States Coast Guard, State of Alaska Department of Education & Early Development, and Southeast Alaska Regional Health Consortium; and,
- Emailed notice to the Southeast Alaska Soil and Water Conservation District, Southeast Alaska Conservation Council, U.S. Army Corps of Engineers, and all State agencies who received the agency review notice.

The public notices stated that written comments were to be received by 5:00 PM, May 11, 2020 for the PD and 5:00 PM, September 8, 2021 for the Amended PD in order to ensure consideration and eligibility to appeal. For more information, refer to the attached PD and Amended PD.

The addition of fill requires that a Record of Survey approved by the DMLW Survey Section show the pre-construction MHW boundary. The Record of Survey must be completed and approved by the DMLW Survey Section before fill is placed. An Alaska Tideland Survey (ATS) completed by an Alaska licensed surveyor will be required for the subject parcel, at the expense of CBS, prior to the issuance of a state tideland patent. This process will be subject to ordinances within Title 21 of the City and Borough of Sitka General Code. During the process, the public will have an opportunity at the local level to provide additional comment and feedback prior to final establishment of lot corners and monuments.

IV. Summary of Comments

DNR DMLW LCS received comments from Southeast Regional Health Consortium (SEARHC) and the Sitka Tribe of Alaska (STA). All comments received during the public comment period as summarized and addressed below.

SEARHC submitted May 7, 2020: SEARHC expressed concern regarding the proximity of proposed commercial activities on the subject parcel and their potential impact to Mt. Edgecumbe Medical Center (MEMC), hospital, behavioral health and counseling facilities, residential treatment for youth, and other associated primary healthcare services. In particular, SEARHC stated that no studies or assessments on the impact of the traffic flow through the hospital zone have been completed, and it is concerned about impacts to community health associated with increased traffic, deliveries, and road closures from the proposed and future development on the subject parcel. Additionally, SEARHC stated that the national landmark properties located at the end of Seward Avenue (adjacent to the subject parcel) were transferred to the Bureau of Indian Affairs after being designated for educational and healthcare purposes by the United States Congress. SEARHC believes additions to streetscape are highly unlikely.

SEARHC articulated that the proposed development on the subject parcel has been under consideration since 2000, before SEARHC's venture to provide a new community hospital and nursing home. SEARHC stated that the proposed conveyance does not appear to recognize the

Final Finding and Decision

City and Borough of Sitka – ADL 109021

Page 3 of 5

new healthcare facility plans for their upland parcels in the vicinity of the subject parcel. SEARHC expressed concern that the proposed commercial development on the subject parcel would impede on the use of adjacent properties for public health.

Lastly, SEARHC stated that impacts to health care programs from the proposed development on the subject parcel have not been officially presented to the public.

DNR DMLW LCS Response: LCS appreciates your review of the preliminary decision. This comment discusses the potential impacts to SEARHC services, future expansion, and historic upland properties caused by commercial activities and traffic. These topics are related to future development of the adjacent uplands and tide and submerged land and are beyond the scope of this decision. The scope of this decision is limited to transferring title to the subject parcel from the State of Alaska to CBS. However, in cooperation with the Federal Aviation Administration (FAA), CBS conducted an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) for the proposed future development on the subject parcel and adjacent uplands. Based on the EA, the FAA issued a Finding of No Significant Impact (FONSI). SEARHC may request details and findings of the EA from CBS.

Sitka Tribe of Alaska (STA) submitted May 11, 2020: STA stated that marine mammals such as mustelids, pinnipeds, and cetaceans are frequently observed near the subject parcel. STA expressed concern that the seaplane base development proposed for the subject tide and submerged parcel would disrupt the movement of these marine mammals. In addition, STA expressed concern over the size of the subject parcel and how the proposed and future development may impact navigation and transient vessel moorage during seasonal periods of heavy marine vessel traffic in Sitka Channel. Lastly, STA articulated its partnership with SEARHC and expressed its support for comments and concerns submitted by SEARHC.

DNR DMLW LCS Response: LCS appreciates your review of the preliminary decision. Marine mammal populations are managed by the Alaska Department of Fish and Game (ADF&G) and National Oceanic Atmospheric Administration (NOAA). ADF&G was consulted during the agency review period for this project and stated that biologists previously reviewed and commented on the proposed development during the EA. ADF&G did not have any supplementary comments or objections regarding the tideland conveyance. Additionally, research from NOAA was incorporated into the EA. STA may request the details and findings of the EA from CBS.

The size of the subject parcel is associated with the tide and submerged lands required to encompass the proposed improvements and anchors. Since the initial public notice of the PD, the Amended PD expanded the subject parcel size to 29.97 acres to accommodate the revised development concept. The final acreage of the subject parcel will be determined by the required Alaska Tideland Survey that will include only the developed seaplane base area. The survey will be completed after the development is complete.

Please see the above response to the comment submitted by SEARHC.

Sitka Tribe of Alaska (STA) submitted September 1, 2021: STA expanded its comments shared in the May 11, 2020, comment to add concern about impacts to the new SEARHC hospital. STA also expressed concern regarding the ability of CBS to abide by permit requirements for development on the subject parcel and cited an example of non-compliance on a US Army

Final Finding and Decision

City and Borough of Sitka – ADL 109021

Page 4 of 5

Corps of Engineers permit stipulation from a past project. Per STA, a stipulation was included to protect marine mammals and spawning herring from noise generated by the project, but CBS stated that it had no control over the actions of its contractor.

STA also mentioned support for comments submitted by SEARHC during the public comment period for the draft EA completed by CBS.

DNR DMLW LCS Response: LCS appreciates your review of the Amended PD. STA's comment discusses upland impacts on Japonski Island and the ability of CBS to abide by permit requirements for development which are both beyond the scope of this decision. The scope of this decision is limited to transferring title to the subject parcel from the State of Alaska to CBS. Development actions taken by CBS may provide for separate public notice periods and processes. These additional opportunities for public involvement occur after DNR issues a Final Finding and Decision. Regarding SEARHC's comments submitted for the draft EA, please request copies of the response from CBS.

V. Modifications to Decision and/or Additional Information

The recommended action has not been modified from the original proposed action described in the PD and Amended PD.

Recommendation and Approval of the Final Finding and Decision follow.

Final Finding and Decision

City and Borough of Sitka – ADL 109021

Page 5 of 5

VI. Final Finding and Decision

The Land Conveyance Section recommends proceeding with the action as described in the Preliminary Decision and Amended Preliminary Decision. This action is undertaken under relevant authorities. The public interest in retaining the proposed parcel in state ownership does not outweigh the municipal interest.

The findings presented above have been reviewed and considered. Public Notice has been accomplished in accordance with *AS 38.05.945 Notice* and comments received were considered. The project file has been found to be complete and the requirements of all applicable statutes have been satisfied. The action is consistent with constitutional and statutory intent for State-owned land and this action is undertaken under relevant authorities.

\s\ Rachel Longacre

11/8/2021

Recommended by: Rachel Longacre
Section Chief
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

Date

Under the authority of the applicable statutes, it is hereby found to be in the best interest of the State of Alaska to proceed with the recommended action as described and referenced herein.

\s\ Martin W. Parsons

11/8/2021

Approved by: Martin W. Parsons
Director
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

Date

Appeal Provision

A person affected by this decision who provided timely written comment or public hearing testimony on the preliminary decision may appeal it, in accordance with *11 AAC 02*. Any appeal must be received within 20 calendar days after the date of “issuance” of this decision, as defined in *11 AAC 02.040(c) and (d)* and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. Under *11 AAC 02.030*, appeals filed under *11 AAC 02* must be accompanied by the fee established in *11 AAC 05.160(d)(1)(F)*, which has been set at \$200 under the provisions of *11 AAC 05.160 (a) and (b)*.

If no appeal is filed by the appeal deadline, this decision goes into effect as a final order and decision on the 31st calendar day after issuance. An eligible person must first appeal this decision in accordance with *11 AAC 02* before appealing this decision to Superior Court (*11 AAC 02.020 (a) and (b)*). A copy of *11 AAC 02* may be obtained from any regional information office of the Department of Natural Resources.