

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

PRELIMINARY DECISION
ADL 109249

Proposed Noncompetitive Sale to Public and Charitable Applicant
AS 38.05.035(e), AS 38.05.810(a)(3)

RELATED ACTIONS

Proposed Mineral Order (Closing) - AS 38.05.185 and AS 38.05.300

PUBLIC COMMENT PERIOD ENDS 5:00 PM, THURSDAY, SEPTEMBER 7, 2023

I. Proposed Actions

Preliminary Decision: Approval of Noncompetitive Public and Charitable Use Sale ADL 109249

Attachment A: Vicinity Map and Plat No. 98-18

Attachment B: Public Notice

Attachment C: Draft Memorandum of Agreement between the SouthEast Alaska Regional Health Consortium and the Office of History and Archaeology regarding the demolition of building No. 286 on Japonski Island, Sitka, Alaska

Attachment D: Draft Affidavit Acknowledging Conditions of Land and Releasing the State from Related Liability.

Public is invited to comment on the proposed related action:

Draft Mineral Order (Closing) MO 1277

Primary Proposed Action, Noncompetitive Sale: The State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) has received an application to purchase state land pursuant to Alaska Statute (AS) 38.05.810(a)(3) *Public and Charitable Use*. This proposed decision will allow the parcel, ADL 109249, to be sold through a noncompetitive sale to the applicant, SouthEast Alaska Regional Health Consortium (SEARHC), pursuant to AS 38.05.810(a)(3). SEARHC, Federal Identification Number 92-0056274, is a non-governmental agency performing a public service with exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. The parcel is located on Japonski Island within the City and Borough of Sitka and is surveyed by Alaska State Land Survey No. 97-63, according to the plat recorded in the Sitka Recording District on July 15, 1998, as Plat No. 98-18, excluding Taku Court, containing 1.53 acres, more or less. See *Attachment A: Vicinity Map and Plat No. 98-18* for additional information.

Proposed Related Action: This related action will be developed separately; however, public notice is being conducted concurrently.

Mineral Order (Closing): DNR proposes to close the land surveyed through Alaska State Land Survey No. 97-63, including Taku Court, to new mineral entry. There are no current mining claims located within the parcel. Refer to **Section VIII. Planning, Classification, and Mineral Orders** for more information on this proposed related action.

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This related action will be developed separately. However, approval of the proposed actions is dependent upon one another in that one action will not proceed without the approval of all actions.

Public Notice of Proposal: In accordance with *AS 38.05.945 Notice*, during a period of at least 30 consecutive days, the public will have the opportunity to submit written comment on this proposal. Public notice for all actions is conducted concurrently and will include the PD for the noncompetitive sale (ADL 109249) and draft Mineral Order (Closing) 1277.

See **Section XVI. Submittal of Public Comments** at the end of this document and *Attachment B: Public Notice* for details on how to submit a comment for consideration. If, after consideration of timely, written comments, LCS moves forward with the proposal, a Final Finding and Decision (FFD) will be issued.

II. Authority

DNR has the authority under *AS 38.05.810(a)(3) Public and Charitable Use* to sell or dispose of state land to a tax-exempt, nonprofit corporation, association, club, or society organized and operated for the management of a cemetery or a solid waste or other public facility for less than the appraised value as determined by the director and approved by the commissioner to be fair and proper and in the best interests of the public, with due consideration given to the nature of the public services or function rendered by the applicant, and of the terms of the grant under which the land was acquired by the state. *AS 38.05.810(a)* states, "The commissioner shall ensure, by regulation, deed restriction, covenant, or otherwise, that disposals of land under this subsection serve a public purpose and are in the public interest."

AS 38.05.810(g) states, "The commissioner shall retain a reversionary interest on each sale or other disposal granted under (a) or (e) of this section. The commissioner may waive the reversionary interest on a written determination that the waiver is in the public interest."

AS 38.05.035(e) Powers and Duties of the Director gives DNR the authority to sell state land if, on preparation and issuance of a written finding, it is determined to be in the best interest of the state. *Article VIII, Section 1*, of the Alaska Constitution states, "It is the policy of the state to encourage settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

For the related action, *AS 38.05.300 Classification of Land* and *AS 38.05.185 Generally* allow for mineral orders.

III. Administrative Record

The project file for ADL 109249 constitutes the administrative records for this proposed action. Also incorporated by reference are:

- Northern Southeast Area Plan (NSEAP, adopted 2002) and associated land classification files;
- Alaska Department of Fish and Game Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes;
- Preliminary Decision of land conveyance issued by the State of Alaska Department of Education and Early Development on October 7, 2022, and the subsequent Final Finding and Decision issued on December 27, 2022;

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- Restoration Science & Engineering, LLC, 2020, SEARHC – Phase I Environmental Site Assessment, Penrod Hall – 286 Tongass Drive, Sitka, Alaska 99835;
- Environmental Management, Inc., 2018, Hazardous Building Material Survey, Penrod Hall – Mt. Edgecumbe/Sitka Medical Campus; and
- DNR case files: ADL 106359, ADL 104883, OSL 1668, and Quitclaim Deed No. 1372.

IV. Scope of the Proposal

The scope of this proposal, under the statutes described in the preceding **Section II. Authority**, is limited and specific to determining the following: (1) if the applicant and the subject parcel themselves qualify, (2) if it is in the state's best interest to dispose of the subject parcel, (3) if it is in the state's best interest to dispose of the subject parcel to the applicant, and (4) if it is in the state's best interest to waive the reversionary clause. The scope of this decision does not include the control of post-patent land use, and LCS does not intend to impose restrictions for this purpose by waiving the reversionary clause. Restrictions regarding land use will be handled by the local zoning authority, if any.

The proposed related action will be issued concurrently with the FFD. This action is described in more detail in the **Section VIII. Planning, Classification, and Mineral Orders**.

V. Description

- a. Location: The subject parcel is located within DNR's Southeast Region, on Japonski Island, City and Borough of Sitka, within Section 35, Township 55 South, Range 63 East Copper River Meridian, and Section 2, Township 56 South, Range 63 East, Copper River Meridian. See *Attachment A*: Vicinity Map and Plat No. 98-18 for additional information.

USGS Map Coverage: Sitka A-5

Platting Authority: City and Borough of Sitka

Regional Corporation: Sealaska Corporation

Federally Recognized Tribe: Sitka Tribe of Alaska and Central Council of the Tlingit and Haida Tribes of Alaska

Village Corporation: Shee Atika, Inc.

- b. Legal Description: Alaska State Land Survey No. 97-63, according to the plat recorded in the Sitka Recording District on July 15, 1998, as Plat No. 98-18, excluding Taku Court, containing 1.53 acres, more or less.

Legal description of the proposed mineral order: Alaska State Land Survey No. 97-63, according to the plat recorded in the Sitka Recording District on July 15, 1998 as Plat No. 98-18, containing 1.89 acres, more or less.

The subject parcel will need to be re-surveyed prior to disposal. See **Section IX. Survey** for additional information.

VI. Title

Title Report No. 22870, current as of February 24, 2023, indicates that the State of Alaska holds fee title to the land and mineral estate under a Quitclaim Deed, dated January 5, 2023, and accepted January 17, 2023. The applicable State case file is OSL 1668. The parcel is subject to

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valid existing rights, including but not limited to platted easements and reservations, and lease agreement ADL 106359.

State Reservation of Title:

Retention of and Access to Mineral Estate: In accordance with *Section 6(i)* of the *Alaska Statehood Act* and *AS 38.05.125 Reservation*, the state retains ownership of all oil, gas, coal, ore, minerals, fissionable material, geothermal resources, and fossils that may be in or upon the land that it sells. This retention is for all minerals, including both locatable minerals (such as gold, copper, silver, etc.) and leasable minerals (such as oil, gas, coal, etc.)

The State and its successors reserve the right to enter onto the land for the purposes of exploring for, developing, and producing these reserved mineral resources. Access reserved to these retained interests is superior to any, and all land uses. The State may also lease these retained interests to mineral developers or allow mining locations to be staked. However, *AS 38.05.130 Damages and Posting of Bond* also provides that the surface owner will be compensated for damages resulting from mineral exploration and development. For more information, see **Section VIII. Planning, Classification, and Mineral Orders.**

Navigable Waters: Per *AS 38.05.126 (b) Navigable and Public Waters*, "...the state has full power and control of all of the navigable or public water of the state, both meandered and not meandered, and the state holds and controls all navigable or public water in trust for the use of the people of the state." This trust is in accordance with the principles of the Public Trust Doctrine, which are included in Article VIII, Section 14 of the Constitution of the State of Alaska and protected in the United States Constitution. It is vested in the title to this land, is not transferable, and the state's title to submerged lands under navigable waters cannot be relinquished by a transfer of the property. In holding with this concept, navigability determinations are made, and access will be reserved per *AS 38.05.127 Access to and Along Public and Navigable Water*. For more information, see **Section X. Access, Including Access to and Along Public and Navigable Water.**

The Bureau of Land Management has not made navigability determination for waters within the affected townships for title purposes.

Native interest: The subject lot is within the boundaries of Sealaska regional corporation, Sitka Tribe of Alaska and Central Council of the Tlingit and Haida Indian Tribes of Alaska federally recognized tribes, and Shee Atika, Inc. village corporation. There are no Native interests identified within this parcel.

Other Conflicts or Pending Third-Party Interest: SEARHC has a leasehold interest in the property. DNR originally issued the lease on November 1, 1998, ending October 31, 2028. The lease agreement was serialized as DNR casefile ADL 106359. Management of the lease was transferred from DNR to the Alaska Department of Education and Early Development (DEED) upon conveyance of the property. Additionally, Patent 50-90-0267 dated 5/11/1990, states that Lot 15, U.S. Survey No. 1496, Alaska is subject to a right-of-way, AA-40276, for a sewer line, granted to the City and Borough of Sitka, under the

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provisions of Title V of the Act of October 21, 1976, Pub. L. 94-579, 90 Stat. 2743, as authorized by Sec. 906(l) of the Alaska National Interest Lands Conservation Act of December 2, 1980, Pub. L. 96-487, 94 Stat. 2442. The right-of-way is not surveyed, but SEARHC staff has stated that the sewer line follows Tongass Drive and does not affect the subject parcel. If additional conflicts or third-party interests are discovered during this public notice period, they will be discussed in the FFD.

VII. Background and Discussion

Background

The parcel was surveyed as United States Survey 1496 of the Naval and Military Reserve situated on Japonski Island, in Sitka Bay, Territory of Alaska, on August 27, 1926. The property was developed in the 1940s to support the U.S. Navy. Penrod Hall was built to support the U.S. Navy circa 1940 as a dormitory. The United States Congress authorized the conveyance of certain property on Japonski Island to the state through Public Law 98-63, July 30, 1983, amended by Public Law 98-396, August 22, 1984. Federal law restricted the use of the subject parcel to school and hospital purposes, and the conveyance of title to the state was subject to an agreement by the State of Alaska to open and operate a Mt. Edgecumbe boarding school facility no later than September 30, 1985.

The State received patent for the parcel on May 11, 1990, through Patent 50-90-0267. The Penrod Hall building was transferred with the patent. On November 1, 1998, SEARHC and DNR entered into a 30-year lease agreement pursuant to AS 38.05.810(a) *Public and Charitable Use*, serialized as ADL 106359, to allow for remodel and use of the first floor of Penrod Hall for storage/warehouse and minimal support office space. On February 8, 1999, a public and charitable conveyance, serialized as ADL 104883, conveyed approximately 57 acres of land on Japonski Island, including ASLS No. 97-63, containing 1.89 acres, more or less, to DEED through Quitclaim Deed No. 1372. Administration of lease agreement ADL 106359 was transferred to DEED. The 1.89 acres included Taku Court, shown on Plat No. 98-18.

DEED has limited statutory authority to convey land. AS 14.07.030(a)(6) *Powers of the Department* allows DEED to convey to a federal agency, state agency, or political subdivision of the state, but not to a non-profit corporation. DNR has the authority to convey to a non-profit corporation, so SEARHC applied to DNR on March 2, 2022, to purchase the subject parcel pursuant to AS 38.05.810(a) *Public and Charitable Use*. On December 27, 2022, DEED issued a Final Finding and Decision of Land Conveyance complementing and updating the Preliminary Decision dated October 7, 2022, recommending the conveyance of the 1.53-acre subject parcel to DNR. Pursuant to DEED's Preliminary Decision issued on October 7, 2022, and the subsequent Final Finding and Decision issued on December 27, 2022, the subject parcel was conveyed to DNR so that DNR may issue a best interest finding for a disposal to SEARHC. The disposal is subject to the following conditions:

1. The parcel is conveyed under "as-is, where-is" conditions inclusive of known or unknown contaminants;
2. If DNR does not convey the subject parcel to SEARHC, the land will revert to DEED;
3. Any sale to SEARHC must occur in a fiscal year where appropriation language provides monetary proceeds to support Mt. Edgecumbe High School; and
4. The parcel will maintain a public purpose.

DEED conveyed to DNR ASLS No. 97-63, excluding Taku Court, containing 1.53 acres, more or less, through a Quitclaim Deed that was accepted on January 17, 2023. This Quitclaim Deed

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excluded Taku Court because SEARHC did not apply to purchase the additional 0.36 acres. Land research and correspondence with the City and Borough of Sitka has concluded that Taku Court was not dedicated to the City and Borough of Sitka as a public right-of-way, and DEED still holds title to the parcel. A future conveyance of the 0.36-acre right-of-way parcel may be necessary if SEARHC desires a contiguous parcel extending from the subject parcel to the current Mount Edgecumbe Medical Center parcel.

Penrod Hall poses environmental and physical hazards to the public, and health, safety, and aesthetic risks to SEARHC operations. The 2018 Hazardous Building Material Survey indicated the presence of asbestos, lead-based paint, mold, and other regulated materials throughout the building. The 2020 Phase I Environmental Site Assessment revealed that any soil or groundwater collected from the subject parcel requires approval from the Alaska Department of Environmental Conservation (DEC) before it can be moved offsite, but a Phase II Environmental Site Assessment is required for a complete understanding of requirements. Use of the building was abandoned approximately ten years ago, and conditions have deteriorated to become unsafe for human occupation. An April 28, 2023 site inspection by DNR staff revealed evidence of inhabitants, including alcohol cans and bottles, drug paraphernalia, lighters, clothing, food, trash, bedding, a tent, and general vandalism. For more information, see **Section XII. Hazardous Materials and Potential Contaminants.**

SEARHC expressed interest in obtaining the subject parcel to 1) cleanup and remove environmental and physical hazards adjacent to its facilities, 2) provide for future expansion needs, and 3) allow staging for the expansion construction. A May 2020 engineer estimate obtained by SEARHC for abatement and demolition costs totaled \$1,924,214 for the demolition and removal of Penrod Hall. This estimate does not include any subsurface cleanup costs that may be required following additional assessments. The cost of remediation and building demolition is greater than the \$430,000 land value obtained through a November 2020 appraisal of the subject parcel. This information led SEARHC to request the conveyance of the parcel at no cost.

Discussion

SEARHC has requested that this purchase application be considered under *AS 38.05.810(a)(3)*. SEARHC is a tax-exempt, nonprofit corporation that operates and manages Mount Edgecumbe Medical Center, a public facility adjacent to the subject parcel. Pursuant to *AS 38.05.810(a)(3)*, SEARHC is eligible for a land conveyance for less than the appraised value as determined by the director and approved by the commissioner to be fair and proper and in the best interests of the public, with due consideration given to the nature of the public services or function rendered by the applicant, and of the terms of the grant under which the land was acquired by the state. The commissioner shall ensure, by regulation, deed restriction, covenant, or otherwise, that disposals of land under this *AS 38.05.810(a)* serve a public purpose and are in the public interest.

SEARHC's proposed uses of the subject parcel include cleanup and removal of environmental and physical hazards, future expansion needs, and staging for construction materials. The future expansion needs, as currently designed, do not directly utilize the subject parcel, and SEARHC has stated that future development plans for the subject parcel depend on the costs required for cleanup. The Penrod Hall building contains hazards for Mount Edgecumbe Medical Center patients, adjacent Mount Edgecumbe High School, and the general public. While no plans exist to utilize the subject parcel for a public facility that serves a public purpose or

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provides a public service, removal of the environmental and physical hazards of the Penrod Hall structure on the subject parcel by SEARHC functions as a public service.

AS 38.05.810(g) states that the commissioner shall retain a reversionary interest on each sale or other disposal granted under AS 38.05.810(a) or (e) unless the reversionary interest is waived. DNR will retain a reversionary interest in the subject parcel as allowed by AS 38.05.810(g) in order to ensure that the parcel remains utilized for a public purpose.

VIII. Planning, Classification, and Mineral Orders

Planning

The subject parcel is located within the Northern Southeast Area Plan (NSEAP, adopted 2002), Unit B-22, Japonski Island, a portion of ASLS 88-62. At the time of the NSEAP development and adoption, land within Unit B-22 was not assigned a land use classification because the land was not in DNR ownership, having been conveyed to DEED.

Upon acceptance of the Quitclaim Deed on January 17, 2023, a request for Determination of Plan Designation and Classification was submitted to DNR's Resource Assessment and Development Section (RADS). The authority for this determination is derived from 11 ACC.55.030 *Land Use Plan* and the provisions in Chapter 4 of the NSEAP describing a minor change. The applicable guidelines pertaining to management and possible disposal of land are found in Chapter 2, Management Guidelines for Settlement, Section B. Isolated Parcels of State Land.

On June 15, 2023, Determination SE-02-001-D12 was issued by RADS, which modifies the NSEAP and LCO SE-02-001 to designate Unit B-22 as Public Facilities - Transfer which converts to a classification of Resource Management Land. The determination also updates the management intent of Unit B-22 to state "land within this unit is to be reserved for public uses and infrastructure."

Pursuant to 11 AAC 55.200 *Resource Management Land*, land with this classification is either:

- A) Land that might have a number of important resources, but for which a specific resource allocation decision is not possible because of a lack of adequate resource, economic, or other relevant information; or for which a decision is not necessary because the land is presently inaccessible and remote and development is not likely to occur within the next 10 years; or
- B) Land that contains one or more resource values, none of which is of sufficiently high value to merit designation as a primary use.

The classification of Resource Management Land is appropriate for this unit to reflect past use and facilitate continued use for public purposes. SEARHC is a non-governmental agency performing a public service with exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. Conveyance of the subject parcel to SEARHC through a Public and Charitable Use purchase pursuant to AS 38.05.810(a)(3) is consistent with the classification of Resource Management Land.

Mineral Order

DNR proposes to close the land surveyed through Alaska State Land Survey No. 97-63, including Taku Court, to new mineral entry in accordance with AS 38.05.185 *Generally* and AS

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38.05.300 Classification of Land. There are no current mining claims located within the parcel. Closing the parcel to new mineral entry is consistent with the management intent of the NSEAP, which states that mining was determined to be in conflict with land to be used for settlement, public facilities, and public uses. If approved by the Commissioner, Mineral Order 1277 will close the subject parcel to new mineral entry. If the Commissioner approves the public and charitable sale, the mineral order will accompany the FFD. The approval of the mineral order is a separate action occurring concurrently with the FFD; however, approval is dependent upon one another in that one action will not proceed without the approval of both actions.

Mineral orders which close an area to mineral entry, close the area to new exploration and development of locatable minerals such as gold, copper, platinum, etc. Such mineral orders do not apply to leasable minerals (such as oil, gas, coal, etc.), or exploration licensing for such, nor do they preclude reasonable surface access to these resources. However, *AS 38.05.130 Damages and Posting of Bond* stipulates that the land estate owner will be compensated for damages resulting from mineral exploration and development.

Local Planning

The project area is within the City and Borough of Sitka and is zoned Public Lands.

Flood Risk

This parcel is in Zone X, an area of minimal flood hazard mapped on Pre-Flood Insurance Rate Map (FIRM) panel 02220C0411D.

IX. Traditional Use Findings

The subject parcel is located within the City and Borough of Sitka, and a traditional use finding is therefore not required per *AS 38.05.830 Land Disposal in the Unorganized Borough*. For specifics regarding the historic determination of Penrod Hall and the demolition of building No. 286, see *Attachment C: Memorandum of Agreement between the SEARHC and the Office of History and Archaeology*. There are no anticipated significant changes to traditional uses of the land and resources of this area as a result of the proposed action. Additional information on traditional use is welcome during the public comment period, and if this proposal is approved, LCS will address the information received in a subsequent FFD, if one is issued. See the **Section XVI. Submittal of Public Comments** and *Attachment B: Public Notice* for details on how to submit comment.

X. Access, Including Access To and Along Public and Navigable Water

Public Access

Physical and legal access is via Tongass Drive, a public right-of-way managed by the City and Borough of Sitka.

Access Along Navigable and Public Waters

In accordance with *AS 38.05.127 Access to Navigable or Public Water*, DNR will determine if a water body is navigable or public and establish easements or rights-of-way as necessary to ensure unobstructed access to and along the body of water. Regulations dictating the creation of easements or rights-of-way under this statute include *11 AAC 51.035 Determination of Navigable and Public Water*, *11 AAC 51.045 Easements to and Along Navigable and Public Water*, and *11 AAC 53.450 Buffer trips, reserved Areas, and public easements*.

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DNR has not identified any public, navigable, or anadromous water bodies within the project area. If any such water bodies are discovered, parcels will be subject to access reservations in accordance with *AS 38.05.127 Access To Navigable or Public Water*, and a 100-foot building setback from the ordinary high water of the water body.

The proposed land sale does not require reservation of public access along navigable and public waters pursuant to *AS 38.05.126(a) Navigable and Public Water*.

Easements and Setbacks

- Utility easements; and
- Additional reservations and/or restrictions required through the local platting authority.

Where appropriate, reservations and restrictions will be depicted on the plat and described in plat notes.

XI. Reservation of Mineral Estate

In accordance with *section 6(i)* of the Alaska Statehood Act and *AS 38.05.125 Reservation*, 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 Damages and Posting of Bond* and other applicable statutes and regulations.

XII. Hazardous Materials and Potential Contaminants

The subject parcel is adjacent to the former Sitka Naval Operating Base areas of interest C, E, and F, which were issued a "Cleanup Complete" status by DEC. Area F was given a status of "Cleanup Complete with Institutional Controls" in 2011. However, the 2018 Hazardous Building Material Survey initiated by SEARHC indicated the presence of asbestos, lead-based paint, and other regulated materials throughout Penrod Hall on the subject parcel.

The Phase I Environmental Site Assessment of Penrod Hall was completed in June 2020. The assessment found 1) any soil or groundwater collected from the subject parcel requires approval from DEC before moving it off-site, 2) an above-ground fuel storage tank was at one time located adjacent to Penrod Hall, but there is no information about any spills, and 3) previous military cleanup efforts on Japonski Island did not address the subject parcel. A Phase II Environmental Site Assessment has not been conducted.

A site inspection conducted by DNR staff on April 28, 2023, revealed several types of molds, peeling paint, exposed insulation, broken fluorescent light bulbs, and evidence of a leaking roof. Three above-ground fuel tanks, several fuel drums, and approximately five compressed gas tanks were stored on the subject parcel behind Penrod Hall.

The State of Alaska makes no warranties as to the 'nonexistence' of contamination not now identified and that the state records are not a warranty as to all potential contamination on the subject parcel. The State of Alaska does not assume any liability, and DNR requires that after the parcel is surveyed, SEARHC sign an affidavit releasing the State from liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants and for the remediation of the site should such substances ever be identified. SEARHC recognizes that the subject parcel is conveyed on an "as is" basis and in the condition of the conveyance. See

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Attachment D: Affidavit Acknowledging Condition of Lands and Releasing the State from Related Liability.

XIII. Survey

The subject parcel is determined to be unsurveyed. The parcel does not meet the State's survey criterion for conveyance because Plat No. 98-18 is not a valid plat. ASLS No. 97-63 does not have local Platting Authority approvals. In addition, a Section Line Easement per AS 19.10.010 for a protracted Section Line applies to all State-owned lands including within a U.S. Survey. The protracted Section Line Easement is not depicted on ASLS No. 97-63. The protracted Section Line Easement affects interest in title and therefore exceeds the criteria for an Amended Plat action. The subject parcel requires a new Alaska State Land Survey, which will result in a new legal description of the subject parcel. Upon DNR approval for the purchase of the subject parcel, a survey of the parcel performed by an Alaska Registered Land Surveyor under the direction of the DMLW Survey Section will be required at the expense of SEARHC. The survey must be approved by the State of Alaska and the City and Borough of Sitka.

LCS will issue a notice to proceed to survey if no appeals are received, or when appeals are resolved, after issuance of an FFD. SEARHC must hire a surveyor, and the surveyor must apply to DMLW's Survey Section for Survey Instructions. After issuance of the Survey Instructions, SEARHC must submit a completed survey to DMLW's Survey Section for review. SEARHC's survey must be approved by DMLW and the local platting authority, if any, as set forth in the Survey Instructions.

The plat of ASLS No. 97-63 was an offer of Dedication of the Taku Court right-of-way. The plat was not approved by the City and Borough of Sitka platting authority, so there is no formal acceptance. The City and Borough of Sitka has not asserted ownership or management of this right-of-way.

XIV. Compensation and Appraisal

Pursuant to AS 38.05.810(a)(3) *Public and Charitable Use*, DNR may convey land to a tax-exempt, nonprofit corporation, for less than the appraised value as determined by the director and approved by the commissioner to be fair and proper and in the best interests of the public, with due consideration given to the nature of the public services or function rendered by the applicant, and of the terms of the grant under which the land was acquired by the state. LCS has evaluated the applicant's tax-exempt, nonprofit status, as well as the proposed project, and has determined that the proposed project is consistent with the intent of AS 38.05.810(a)(3). Selling the parcel for less than the appraised value is in the best interests of the public.

If the purchase is approved, the subject parcel will be sold at no cost pursuant to AS 38.05.810(a)(3). See section **VII. Background and Discussion** for more information on the land value compared to abatement and demolition costs.

XV. DMLW and Agency Review

Information and comments received from multiple sections within DMLW prior to and during agency review have been considered and included in the preparation of this PD. Agency review was conducted between March 24, 2023, through April 13, 2023. Comments pertinent to the proposed actions received during agency review have been considered and addressed below. Additional timely comments received during the Public Notice period will be considered and addressed in a subsequent FFD, if one is issued.

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DNR DMLW LCS received brief comments of non-objection from the following agencies: Alaska Department of Transportation & Public Facilities, Alaska Department of Fish and Game, DNR Division of Parks and Outdoor Recreation, and DNR Division of Oil and Gas.

DNR DMLW LCS Response: LCS appreciates your preview of the proposal.

DNR Division of Parks and Outdoor Recreation, Office of History and Archaeology (OHA): Building 286, Barracks No. 3, Penrod Hall is eligible for the National Register of Historic Places. This land conveyance will ultimately result in the buildings demolition. OHA is consulting with SEARHC to develop a Memorandum of Agreement (MOA) to mitigate this adverse effect. The MOA will be executed at the time of the FFD approval. Once the MOA is executed OHA will consider the requirements of the Alaska Historic Preservation Act to be met. OHA recommends that the conveyance includes record of the finalized MOA stipulations that will resolve the adverse effect.

DNR DMLW LCS Response: LCS appreciates your review of the proposed noncompetitive sale. Compliance with stipulations listed in the final MOA will be a condition of the land sale.

DNR Division of Geology and Geophysical Surveys: Soil on the subject parcel may be composed of embankment fill, volcanic ash, and glacial drift deposits overlying Sitka Group bedrock. The subject parcel is located approximately 30 miles inboard of the mapped trace of the Fairweather fault. The region's overall seismic hazard potential is moderate, and standard best building practices should be used to accommodate the regional hazard. The subject parcel is located 15 miles east of Mount Edgecumbe, an active stratovolcano on Kruzof Island. The subject parcel is located outside of the tsunami inundation extent for Sitka. Lastly, radon gas is modeled to be low in the vicinity of the subject parcel.

DNR DMLW LCS Response: LCS appreciates your review of the proposed noncompetitive sale, and your comment is noted.

The following agencies or groups were included in the agency review, but no comment was received:

- DNR Division of Forestry and Fire Protection;
- DNR Division of Agriculture;
- DNR Office of Project Management and Permitting;
- DEC;
- Alaska Department of Commerce and Economic Development;
- Alaska Mental Health Land Trust; and
- University of Alaska Land Management.

XVI. Submittal of Public Comments

See Attachment B: Public Notice for specific dates and conditions.

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Pursuant to *AS 38.05.945 Notice*, LCS is issuing public notice inviting comment on this preliminary decision and draft mineral order.

In accordance with *AS 38.05.946(a) Hearings*, a municipality or corporation entitled to receive notice under *AS 38.05.945(c) Notice* may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the Commissioner (or representative) shall attend the hearing. The Commissioner has discretion whether or not to hold a public hearing.

LCS will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the PD or proposed related action, additional public notice for the affected lands will be given. Reducing the amount of land offered and making minor changes to any of the proposals will not be considered significant changes requiring additional public notice.

If the proposals are approved, and no significant change is required, the PD and draft mineral order, including any deletions, minor changes, and a summary of comments and LCS responses, will be issued as a subsequent FFD and Mineral Order 1277 without further notice. The related action will be developed separately. However, approval of any action is dependent upon one another. One action will not proceed without approval of all actions.

Only persons from whom LCS receives timely, written comment during the identified comment period will be eligible to file a request for reconsideration of the FFD and Mineral Order 1277. Upon approval and issuance of these actions, a copy of the decision and order will be made available online at <http://landsales.alaska.gov/> and sent with an explanation of the request for reconsideration process to any party who provides timely written comment.

DNR is prepared to accommodate individuals with disabilities by providing auxiliary aids, services, or special modifications in order to participate in this review. Individuals who may need such assistance should contact DNR's Public Information Center. For more information refer to *Attachment B: Public Notice*.

**DEADLINE TO SUBMIT WRITTEN COMMENT IS
5:00 PM, THURSDAY, SEPTEMBER 7, 2023**

XVII. Stipulations, Restrictions, and Reservations

Stipulations

If approved for conveyance, the applicant will be required to comply with the following stipulations to complete the proposed land sale:

1. Compliance with stipulations included in the final MOA between SEARHC and OHA. See *Attachment C: Draft Memorandum of Agreement between the SouthEast Alaska Regional Health Consortium and the Office of History and Archaeology regarding the demolition of building No. 286 on Japonski Island, Sitka, Alaska*, for details.
2. The subject parcel must maintain a public purpose.
3. Once a Final Finding and Decision is signed and the appeal period is over without an appeal received, a notice to proceed to survey will be issued. The applicant must hire a surveyor, and the surveyor must apply to the DMLW Survey Section for Survey Instructions. Within

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two years after issuance of the Survey Instructions, the applicant must submit a completed survey to DMLW's Survey Section for review. The applicant's survey must be approved by DMLW and the local platting jurisdiction, if any, as set forth in the Survey Instructions. Survey costs shall be borne by the applicant.

4. Upon approval and recording of the survey, a notice to proceed to purchase will be issued to the applicant. Within the time period specified in the notice, the applicant must submit the following to LCS:
 - A signed Memorandum of Agreement between the SouthEast Alaska Regional Health Consortium and the Office of History and Archaeology regarding the demolition of building No. 286 on Japonski Island, Sitka, Alaska;
 - A signed and notarized affidavit acknowledging the condition of the land and releasing the State from related liability;
 - A completed and signed Declaration of Intent Form; and
 - Patent application and recordation fees. Fees are established under *11 AAC 05.100 Land Disposals* and *11AAC 05.200 Recorder's Office* and are subject to change. Some fees have been reduced by Director's Fee Order Number 3.

5. Subject parcel is conveyed "as-is, where-is". As a condition of the conveyance, after the new Alaska State Land Survey is completed, SEARHC must sign Attachment D: Draft Affidavit Acknowledging the Condition of the Land and Releasing the State from Liability, for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants and for the remediation of the site for known and unknown substances.

If extenuating circumstances delay any of the stipulations listed above, the applicant is responsible for notifying LCS and receiving approval from LCS for the delay with new timeframes for completion to be given. Failure to do this could result in the closure of the purchase application. The purchase cannot be completed until all the above stipulations have been satisfied.

Restrictions and Reservations

Conveyance document will be issued subject to the following restrictions and reservations:

1. Valid existing rights, including reservations, easements, and exceptions in the U.S. Patent, or other state or federal conveyance, and in acts authorizing the issue thereof; easements, rights-of-way, covenants, conditions, reservations, notes on the plat, and restrictions of record, if any.
2. Reservation of the mineral estate pursuant to Section 6(i) of the Alaska Statehood Act and *AS 38.05.125 Reservation*; and reservation of reasonably necessary access to the mineral estate in accordance with *AS 38.05.130 Damages and Posting of Bond*.
3. *AS 38.05.810(g)* states that the commissioner shall retain a reversionary interest on each sale or other disposal granted under *AS 38.05.810(a)* or *(e)* unless the reversionary interest is waived. In this case, DNR will retain the reversionary interest for this land sale.

XVIII. Alternatives

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The following alternatives were considered:

Alternative 1: Sell

Approve the proposed conveyance of the subject parcel to SEARHC as proposed in this decision in accordance with *AS 38.05.810(a)(3)*.

Alternative 2: Deny purchase application.

Per the Quitclaim Deed accepted by DNR on January 17, 2023, title to the subject parcel will revert back to DEED for continued lease if DNR does not dispose of the subject parcel to SEARHC.

Alternative 1 will allow a tax-exempt, nonprofit corporation to purchase the subject parcel for less than the appraised value to serve a public purpose. Penrod Hall located on the subject parcel, poses physical hazards in addition to significant health, safety, and aesthetic risks to the public. This sale will result in the cleanup and removal of environmental and physical hazards adjacent to SEARHC facilities and Mount Edgecumbe High School, provide for future medical center expansion needs, and is compatible with area plan land classification per NSEAP Determination SE-02-001-D12. Therefore, it is in the best interest of the State to sell the parcel as proposed in this decision.

Article VIII, Section 1 of the Alaska Constitution states, "it is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest." Alternative 1 provides a method for DNR to meet the obligations in the Constitution and statute and maximize public interest. This is the preferred alternative.

The related action is necessary to allow for the offering of the subject parcel. The primary action and related action are dependent upon one another, and if DNR does not approve the primary action, the related action will not be processed.

Under Alternative 2, DNR will convey the subject parcel to DEED for continued ownership, management, and administration of lease agreement ADL 106359, authorized under *AS 38.05.810(a)*. Neither DNR nor DEED has plans to demolish Penrod Hall; the structure will remain unused, the environmental and physical hazards associated with it will not be mitigated, and the condition of the building will worsen over time. Under this alternative, SEARHC could not execute future medical center expansions. This alternative is not preferred.

For the reasons outlined above, Alternative 1 is the preferred alternative.

Recommendation follows.

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XIX. Recommendation and Preliminary Decision

This Preliminary Decision for the proposed disposal of state lands and Mineral Order 1277 described throughout this document and its attachments are consistent with the overall management intent for state-owned land and consistent with the requirements of AS 38.05.810(a)(3) *Public and Charitable Use*. Alternative 1 is the preferred alternative because it is the maximum best use of state land and is in the best interest of the public. Alternative 1 will allow SEARHC, a tax-exempt non-profit identified by Federal Identification Number 92-0056274, to mitigate the environmental and physical hazards of Penrod Hall and provide the subject parcel for future healthcare facility expansion available to the local community.

This is a Preliminary Decision, and analysis of subsequent public review may result in changes to the preferred alternative of the proposed disposal of state lands and Mineral Order 1277. A Final Finding and Decision will address any significant issues or concerns raised during the public review process. If the applicant is unable to complete the stipulations, DMLW may decide to close this purchase application and convey the land back to DEED.

The Preliminary Decision, described above, as represented by the preferred alternative, has been reviewed and considered. I find that the recommended action may be in the best interest of the State and that it is hereby approved to proceed to public notice.

signature on file

Prepared by: John King
Natural Resource Specialist 3
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

August 3, 2023

Date of Signature

signature on file

Approved by: Hannah Uher-Koch
Acting Section Chief
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

August 3, 2023

Date of Signature