



**Preliminary Decision  
Kootznoowoo Inc.  
ADL 108566 – Lease  
AS 38.05.075(c)**

**I. Requested Authorization**

An application dated May 25, 2016 was received from Kootznoowoo, Inc. (Applicant) requesting the lease of approximately 1.7 acres of state-owned tide and submerged land that is located approximately 5.7 miles north of the City of Angoon, and 0.4 miles north of Thayer Creek on Admiralty Island for placement of a marine access facility associated with the Thayer Creek hydropower project. The subject parcel is situated immediately adjacent to U.S. Forest Service owned uplands. The Applicant requests a lease with a term of 55-years.

Applicant proposes to construct a marine access facility that includes discharging 15,000 cubic yards of clean rock fill material below the high tide line and mean high water mark (MHW) to construct a barge landing and small boat ramp.<sup>1</sup>

Kootznoowoo, Inc. has also applied for an easement of state tide and submerged lands, for a submarine transmission cable that would run from Thayer Creek to Angoon. That application is being considered concurrently under file ADL 108736.

**II. Proposed Authorization**

The Southeast Regional Office of DNR, Division of Mining, Land and Water (DMLW) intends to issue the applicant a lease for approximately 1.7 acres of state-owned tide and submerged land for a proposed marine access facility with a term of 30 years, to begin at the end of the construction phase.<sup>2</sup> Such 30-year term is designed to be concurrent with the term of the applicant's 30-year special use authorization to be issued by the U.S. Forest Service for the project uplands.<sup>3</sup>

**III. Authority**

AS 38.05.035, AS 38.05.075(c) and Alaska Administrative Code 11 AAC 55 and 11 AAC 58.

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<sup>1</sup> U.S. Army Corps of Engineers permit POA-2001-86 (Thayer Creek)

<sup>2</sup> AS 38.05.070(c) A lease may be issued for a period up to 55 years, if the commissioner determines it to be in the best interests of the state.

<sup>3</sup> U.S. Forest Service, Angoon Hydroelectric Project, Record of Decision, May 2009, p. 7  
Preliminary Decision

#### **IV. Administrative Record**

Case file ADL 108566 is the administrative record for this case. Also, incorporated by reference is the Northern Southeast Area Plan 2002.

#### **V. Scope of the Decision**

The scope of administrative review for this authorization [AS 38.05.035(e)(1)–(2)] is limited to (1) reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and regulations; (3) the facts pertaining to the land or resources; and (4) issues that are material to the determination that issuing the authorization will best serve the interest of the State of Alaska.

#### **VI. Description**

##### **Geographic Location**

Subject parcel is an unsurveyed parcel of state owned tide and submerged land located, approximately 5.7 miles north of the City of Angoon, and 0.4 miles north of Thayer Creek on Admiralty Island.

##### **Legal Description**

Copper River Meridian, Township 49 South, Range 67 East, NE¼ Section 34, on approximately 1.7 acres of tide and submerged land.

##### **Latitude and Longitude (DD)**

57.583°N, 134.638°W

##### **Other Land Information**

- i. Municipality:** N/A
- ii. (ANCSA) Regional Corporation:** Sealaska Corporation
- iii. Village Corporation:** Kootznoowoo, Inc.
- iv. Federally Recognized Tribe:** Central Council of the Tlingit and Haida Indian Tribes

#### **VII. Title**

The State of Alaska owns the tide and submerged lands of the project area under the Equal Footing Doctrine and the Submerged Lands Act of 1953.<sup>4</sup>

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<sup>4</sup> RPT 9605 DNR Realty Services  
Preliminary Decision

The United States retains all its navigational servitude control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 1311 of the Submerged Lands Act, 43 U.S.C.

### **VIII. Planning and Classification**

According to 11 AAC 55.040(c), “A classification identifies the primary use for which the land will be managed, subject to valid existing rights and to multiple use.”

The proposed site is subject to the Northern Southeast Area Plan 2002 (NSEAP), and is located within Management Unit AT-18, Thayer Creek (1,204 acres). The area within AT-18 is designated as both habitat (Ha) and harvest (Hv). The habitat designation converts to Wildlife Habitat land classification. The goals of land designated as habitat and harvest are to: 1) ensure access to public lands and waters, 2) mitigate habitat loss, and 3) contribute to economic diversity.<sup>5</sup> The NSEAP states that “all land use activities will be conducted with appropriate planning and implementation to avoid or minimize adverse effects on fish, wildlife, or their habitats.”<sup>6</sup>

The NSEAP lists the resources and uses in AT-18 as follows:

*Chum and pink salmon use this unit for rearing, schooling, spawning, and migration. This unit contains an anadromous stream estuarine area where brown bears concentrate, anadromous stream 112-17-10500. There are eagle nests within this unit. There are also known spring concentrations along fish streams of brown bears in this unit. The area is also used by local communities for sport fishing. Brown King crab are also harvested within this unit.*<sup>7</sup>

Parcels designated habitat and harvest are to be managed to ensure minimal disturbance to the harvest resources identified for a given area. When issuing leases, or authorizing the use or development of state lands, DNR, Department of Environmental Conservation (DEC), and Alaska Department of Fish and Game (ADF&G) will recognize the requirements of the activity or development and the benefits it may have to habitat when determining stipulations or measures needed to protect fish, wildlife, or their habitats.<sup>8</sup>

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<sup>5</sup> NSEAP chap.2, p.10

<sup>6</sup> NSEAP chap.2, p.10

<sup>7</sup> NSEAP chap.3, p.161

<sup>8</sup> NSEAP chap.3, p.10

The NSEAP continues to note that, since there is a distinct seasonality associated with the critical life periods of certain marine mammals and fish, seasonality shall be taken into consideration during project review and approval. It may be possible that uses and facilities may be appropriate within areas designated “Ha” and/or “Hv” if the seasonality criteria are satisfied by including mitigating measures in project design.<sup>9</sup>

The Applicant and permitting agencies have recognized the diverse resources and habitat in unit AT-18. These concerns have been addressed throughout the planning stage of the project, most notably in the project’s environmental impact statement undertaken by the U.S. Forest Service with input from the National Marine Fisheries Service (NMFS), and Alaska Department of Fish and Game (ADF&G).<sup>10</sup> Additionally, the U.S. Army Corps of Engineers (USACE) permit to Applicant to place fill material at the proposed lease site also considers environmental impacts.

### **Mineral Orders**

The prospective leasehold area is not covered by a mineral order (AS 38.05.185, 300).

### **Traditional Use Finding**

AS 38.05.830 requires the consideration of effects that the proposed lease will have on the density of the population near the land, and potential for conflicts with the traditional uses of the land that could result from the lease.

The proposed lease is likely to have little or no effect on the population in the immediate vicinity and there is little potential for conflict with the known traditional uses of the land. If we are provided information that clearly demonstrates the lease and the associated development and use have the potential to adversely impact traditional uses, we will, in the Final Finding and Decision, address the potential impacts and present mitigation measures that will either minimize or avoid impacts to traditional uses.

## **IX. Access**

### **Physical and Legal Access**

Presently, physical access to the proposed lease site is via anchorage near the site, beaching vessels on tidelands or above the mean high water line. Public access and use of the prospective lease area shall always be maintained with only reasonable exceptions to protect the project’s operations, and temporarily restricted in specific areas as required for public safety during construction and maintenance.

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<sup>9</sup> NSEAP chap.3, p.11-12, 16

<sup>10</sup> USDA, Angoon Hydroelectric Project Final Environmental Impact Statement, Feb 2009; USACE POA-2001-86, Preliminary Decision

**Access To and Along Public Waters:**

Pursuant to AS 38.05.126(a), the public has a constitutional right to free access to, and use of, navigable or public waters of the State of Alaska. Under 11 AAC 51.045 and AS 38.05.127, DMLW is required to reserve specific public-access easements to and along these waters. Unless comments and other information submitted to DMLW provide justifiable and convincing evidence to do otherwise, this disposal of state interest will be subject to a 50-foot public-access easement seaward and landward of the line of mean high water. It is however advised that the commissioner authorize the applicant to temporarily limit access to areas within the 50-foot public-access easement as necessary for public safety during construction and maintenance activities, or for the projects operational safety under AS 38.05.127(a)(2).

**X. Environmental Risk**

It is our management responsibility to protect the overall public interest if there is a reasonable expectation that a hazardous condition, or hazardous, toxic or radiological material or contamination from such material exists or is known to exist on the land proposed for lease. There are no hazardous conditions known to exist at the proposed site.

The applicant is expected to inspect the prospective lease site and familiarize itself with the condition and quality of the land. The state makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land. The State of Alaska does not assume any liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances ever be identified.

Some disturbance to marine life during the construction phase of the project from increased vessel traffic and construction of the barge landing could impact whales and other marine mammals in the Chatham Strait. These possible impacts have been addressed in the Applicant's EIS and in the subsequent Change Analysis, which provided an updated Biological Assessment & Evaluation (BA/BE). Based on the final project design, the Biological Evaluation determined that there would be no effects on humpback whales and stellar sea lions.<sup>11</sup> Additionally, existing law prohibits harassing, or coming within 100 yards of humpback whales, or 50 yards of other marine mammals.

Hazardous materials, specifically: explosives, fuel for machinery and vehicles, solvents, and lubricants will be transported, handled, and temporarily stored on site. The primary staging and

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<sup>11</sup> Angoon Hydroelectric Project Change Analysis, Nov 2016, p. 12  
Preliminary Decision

storage area for the hydropower project is located on U.S. Forest Service managed uplands. And the applicant has developed a hazardous waste management plan that is currently being reviewed by the U.S. Forest Service, and which includes the use of double-walled tanks and sensors to monitor for fuel leaks.

Additionally, the project will require placing fill material to construct the marine access facility. In accordance with its USACE issued permit the applicant shall use only clean fill material for this project.<sup>12</sup>

## **XI. Background**

The Applicant, Kootznoowoo, Inc., was formed under the Alaska Native Claims Settlement Act (ANCSA) as a village corporation for the City of Angoon. In the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), Congress granted Kootznoowoo rights to develop a hydroelectric facility at Thayer Creek and exempted the project from the requirements of the Wilderness Act.<sup>13</sup> However, the Secretary of Agriculture (through the Forest Service) can prescribe conditions for the project for the protection of the water, wildlife, recreational, and scenic values of Admiralty Island.<sup>14</sup> In January 2001, the Federal Energy Regulatory Commission (FERC) determined that the Thayer Creek project would not require a FERC license, as FERC does not have jurisdiction over National Monument lands administered by the Forest Service.<sup>15</sup> The Forest Service released a final EIS for the project in February 2009, and plans to issue a special use authorization to the Applicant for a 30-year term after the initial construction is completed.

The proposed hydropower project is a run of the river 0.85 MW facility, comprised of a 55-foot tall diversion dam on Thayer Creek above the barrier falls and about 1200 feet from the Chatham Strait shoreline. A 550-foot long penstock will carry water to a powerhouse where the generators and switchgear will be located. A submarine transmission line will convey electricity to Angoon.

The applicant applied to DNR for the lease of the subject tide and submerged land near Thayer Creek on Admiralty Island on May 25, 2016. On May 2, 2017, the applicant received a necessary proffered permit from USACE to place fill material in the waters of the proposed lease site.<sup>16</sup>

### **Related Actions**

Kootznoowoo, Inc. has also applied for an easement on tide and submerged lands to place an approximate 6.4-mile submarine transmission line from Thayer Creek to the City of

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<sup>12</sup> USACE POA-2001-86

<sup>13</sup> ANILCA 506(a)(3)(B)

<sup>14</sup> Id.

<sup>15</sup> USDA, Angoon Hydroelectric Project Final Environmental Impact Statement, Feb 2009, 1-6

<sup>16</sup> USACE POA-2001-86

Angoon. That application is being considered congruent with this decision under ADL 108736. An application for water rights is being adjudicated separately under LAS 30426.

## **XII. Application Reviews**

### **Agency Review**

DNR provided notice and requests for input regarding the proposed lease site to relevant state agencies in August 2016.

ADF&G commented that they have been involved in evaluating the project throughout the planning process and has no objection to the marine access facility.

## **XIII. Discussion**

The Applicant has applied for a non-competitive lease based on the exclusivity of its rights to develop hydropower projects within the Admiralty Island National Monument under ANILCA 506(a)(3)(B). Section 506(a)(3)(B) grants Kootznoowoo, Inc. the right to develop hydroelectric resources on Admiralty Island within township 49 south, range 67 east, Copper River Meridian. Without this statutory language, the subject area would not be available for hydropower development by any party, as it is within the Admiralty Island National Monument. Nor has the subject area been designated as a power site under section 24 of the Federal Power Act. Therefore, only the Applicant can pursue the development of hydropower in the subject upland parcel. The upland owner, the U.S. Forest Service, also recognizes the unique nature of this right, and upon completion of project construction plans to issue a 30-year special use authorization to the Applicant to operate and maintain the hydropower project.<sup>17</sup>

As discussed in section VIII above, the proposed lease of state-owned tide and submerged land and the use of the site is compatible with the land classification in the NSEAP. Additionally, public access in and around the lease area will be maintained with only reasonable and limited exceptions for public safety.

An alternatives analysis for the hydropower project and the marine access facility, including a no-action alternative, was conducted by the U.S. Forest Service during the environmental assessment process.<sup>18</sup> That process resulted in moving the marine facility location closer to the upland project site, and the use of a submarine transmission line in place of an above ground option. In May 2017, USACE issued the applicant a proffered permit under section 404(b)(1) of the

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<sup>17</sup> Angoon Hydroelectric Project, Record of Decision, May 2009, p. 7

<sup>18</sup> USDA, Angoon Hydroelectric Project Final Environmental Impact Statement, Feb 2009 Preliminary Decision

Clean Water Act to place fill in the prospective lease area for construction of the marine facility. Similarly, USACE must follow guidelines under 40 CFR 230.10(a) on alternatives considerations for all section 404 permit applications.

The National Marine Fisheries Service was invited to comment on the Applicant's proposed marine facility plans during the U.S. Forest Service's environmental impact analysis process. NMFS concluded that:

“Construction and operation of the marine facilities and installation of submarine lines would have minor effects on aquatic habitat. Construction of the temporary barge landing could result in the alteration or loss of a small amount of beach and nearshore habitat. However, based on the small area of disruption, the temporary nature of the facilities, and the planned regrading and revegetation of the beach to a pre-project condition, these effects would not affect aquatic life.”<sup>19</sup>

Additionally, ADF&G Division of Habitat has been involved in consulting with the Applicant about the project throughout the planning stage and does not object to the proposed marine access facility.

The project's potential impacts on wildlife habitat and the environment have been documented and mitigation measures have been identified and management plans prepared.

With these considerations, the Southeast Regional Office of DNR, Division of Mining, Land and Water concludes that there is no better or more reasonable alternative to the applicant to access the upland project site. It is thus recommended that the applicant be issued a non-competitive lease pursuant to AS 38.05.075(c) for approximately 1.7 acres of tide and submerged land in the NE¼ of Section 34, Township 49 South, Range 67 East, Copper River Meridian, subject to the terms and conditions stated below.

#### **XIV. Recommendation and Preliminary Decision**

##### **Authorization Type and Term**

Pursuant to AS 38.05.075(c), we recommend issuing a 30-year lease to the applicant for operating a marine access facility. The lease shall be subject to the standard DMLW Lease Agreement, Special Stipulations and the terms and conditions set forth therein (Attachment 2).

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<sup>19</sup> USDA, Angoon Hydroelectric Project Final Environmental Impact Statement, Feb 2009, p. 3-33  
Preliminary Decision



This is a preliminary decision and subsequent public review may result in changes or disapproval of the proposed action altogether.

### **Terms and Conditions**

1. Public access shall be maintained as required by AS 38.05.126, 127.
2. The Permittee shall use only clean fill material for this project. The fill material shall be free from items such as trash, debris, automotive parts, asphalt, construction materials, concrete blocks with exposed reinforcement bars, and soils contaminated with any toxic substance.
3. Provide access to DNR, ADF&G and DEC during the construction phase to monitor compliance with construction management plans.
4. The lease and entry authorization shall contain modifications and/or provisions that are justified by public comment.
5. AS 38.05.090 requires the removal of all buildings and fixtures, gravel pads, foundations, and slabs within 60 days after the termination of the lease. The lessee shall restore the leasehold to a good and marketable condition, acceptable to the commissioner, within 120 days after the termination of the lease (AS 38.05.090). Restoration of the site may require full dismantling and removal of the fill upon expiration or termination of the lease. A future decision will determine the extent of required restoration and will consider whether, due to naturalization and habitat growth, it would be more detrimental to the environment to remove all or a portion of the fill or dredged materials.
  - a. In order to ensure site restoration, three years before the expiration of the lease, the lessee shall apply to DNR for a new lease for the same site, or post a commensurate performance guarantee and submit to DNR a site restoration plan in accord with AS 38.05.090. Alternatively, if at any time during the lease, DNR reasonably determines that the project's continued operation is in jeopardy, DNR may require the lessee to provide a restoration plan and a commensurate performance guarantee.
  - b. The performance guaranty amount may be adjusted during the term of the permit to reflect newly discovered risks or costs for full restoration of the site.

### **Entry Authorization**

Pursuant to AS 38.05.075(f), DNR-DMLW will authorize the applicant entry onto state land through the issuance of an Entry Authorization (EA) pending completion of the required Alaska Tideland Survey, and appraisal. The proposed EA is for a term of three years and would be issued after the Final Decision becomes effective. The effective date of the EA will be the start of the lease term. Once the conditions of the EA are met, the lease will be issued.

**Performance Guaranty**

In accordance with AS 38.05.035(a)(4), applicant will be required to submit a performance guaranty for the lease site.

The amount of the performance guaranty is based on the scope and the nature of the activity and the potential cost of restoring the site. In order to ensure the responsible construction and development of the proposed project and execution of the lease agreement, a performance guaranty of \$75,000 shall be required during the early entry permit period of the project through the completion of project construction. An Alaska Tideland Survey and a construction completion report shall be submitted to DNR proving that the project was completed according to plan and without any unplanned impacts to state land. Upon DNR's approval of the completion report DNR will release the performance guaranty. In order to ensure site restoration, three years before the expiration of the lease, the lessee shall apply to DNR for a new lease for the same site, or post a commensurate performance guaranty and submit to DNR a site restoration plan in accord with AS 38.05.90. If at any time during the lease, DNR reasonably determines that the project's continued operation is in jeopardy, DNR may require the lessee to provide a commensurate performance guaranty.

Performance guaranties are subject to periodic adjustments being made during the term of the authorization to address increases or decreases in the costs of rectifying problems and rehabilitating state land due to inflation, changes in the level or nature of development, or other appropriate factors.

**Insurance**

Per Condition #24 of the lease document, applicant shall secure or purchase at its own expense, and maintain in force at all times during the term of the lease at coverage levels recommended by an insurance broker or professional included on the State's Admitted List, the following policies of insurance to protect both themselves and the State of Alaska (its officers, agents and employees):

**Commercial General Liability Insurance Policy:** Such policy shall have minimum coverage limits of no less than \$1,000,000 combined single limit per occurrence.

**Workers' Compensation Insurance:** The applicant shall provide and maintain, for all its employees, Workers' Compensation Insurance as required by AS 23.30.045. Where applicable, coverage must comply with any other statutory obligations, whether Federal (i.e., U.S.L.&H., or, Jones Act) or other state laws in which employees are engaged in work on the leased premises. The insurance policy must contain a waiver of subrogation clause in favor of the State of Alaska.

If the applicant's general liability policy contains higher limits, we shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to us prior to the issuance of this lease and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. The applicant must provide for a 60-day prior notice to the State of Alaska before they cancel, not renew or make material changes to conditions to the policy. Failure to furnish satisfactory evidence of insurance, or lapse of the policy, is a material breach of this lease and shall be grounds, at the option of the State of Alaska, for termination of the lease.

All insurance policies shall comply with, and be issued by, insurers licensed to transact the business of insurance under A.S. 21. The policy shall be written on an "occurrence" form and shall not be written as a "claims made form unless specifically reviewed and agreed to by the Division of Risk Management, Department of Administration. The State of Alaska must be named as an additional named insured on the policy with respect to the operations of the applicant on or in conjunction with the leased premises, referred to as ADL 108566.

## **Compensation and Appraisal**

### **Appraisal**

Pursuant to AS 38.05.840, an appraisal of the proposed lease site is required to establish its fair market value, unless otherwise determined pursuant to AS 38.05.075(f).

### **Annual Fee**

Pursuant to AS 38.05.075(f), AS 38.05.840(b), and 11 AAC 58.410(b), the annual fee shall be the minimum lease fee of \$1,000.00 as established in 11 AAC 58.410(b) or if an appraisal is required under AS 38.05.075(f), the minimum lease fee shall only apply until an appraisal to determine fair market value has been completed. Once the appraisal has been completed and fair market value rent for the subject parcel has been determined, if the amount is less than \$1,000 per annum the annual fee shall remain at \$1,000.00 in accordance with 11 AAC 58.410(b).

However, if it is determined from the appraisal that the fair market value rent for the subject parcel is greater than the minimum amount, then the rent will be adjusted to reflect this amount from the effective date of the lease and the Applicant will be responsible for the payment of any difference.

### **Periodic Rate Adjustment**

In accordance with AS 38.05.105, this lease may be subject to periodic rent adjustments every five years according to an adjusted fair market value.

### **Survey**

The applicant will be required to provide an Alaska Tideland Survey (ATS) that meets the requirements and standards of the DMLW Survey Section. The applicant's remittance of the survey is a prerequisite to lease issuance. The area shown on Attachment 1 is the basis for the survey, and the survey must be as-built.

Pursuant to 11 AAC 51.045 and AS 38.05.127, a 50-foot public-access easement seaward of the line of mean high water must be included in the survey.

### **XV. Adjudicator Recommendation**

Based on the information provided by the applicant and other agencies, as well as review of planning documents, statutes, and regulations, I recommend approving a lease authorizing the applicant to build and maintain a marine access facility on the proposed site. I recommend proceeding to public notice for the purpose of providing the members of the public and those entities identified in AS 38.05.945 an opportunity to review and submit comments.

  
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**Adam Moser, Natural Resources Specialist III**

June 8, 2017  
\_\_\_\_\_  
**Date**

### **Regional Manager Decision**

The file has been reviewed and found to be complete. It is the finding of the Division of Mining, Land & Water, Southeast Region Land Manager, that issuance of this lease is appropriate.

  
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**Benjamin M. White, Southeast Regional Manager**

June 8, 2017  
\_\_\_\_\_  
**Date**

### **ATTACHMENTS:**

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

## **PUBLIC NOTICE, FINAL DECISION AND APPEAL PROCESS:**

In accordance with the provisions of AS 38.05.945, public notice seeking comments on this preliminary decision will be given to: City of Angoon; Sealaska Corporation; Kootznoowoo, Inc.; Central Council of the Tlingit and Haida Indian Tribes, and those parties that have previously requested written notice. We will also request that the Angoon Post Office post the notice. It will be available on the internet as the Alaska Online Public Notice website, which can be accessed at [www.state.ak.us](http://www.state.ak.us).

The public is invited to comment on this preliminary decision. Comments must be received in writing by the DNR Division of Mining, Land & Water by mail at 400 Willoughby Avenue, P.O. Box 111020, Juneau, AK 99811-1020; by fax at (907) 465-3886; or by electronic mail to [adam.moser@alaska.gov](mailto:adam.moser@alaska.gov) by the close of business on **July 7, 2017** to ensure consideration. Please include your mailing address and telephone contact. In order to establish appeal rights regarding this decision, you are required by law to meaningfully participate in the decision process by commenting on the decision, in writing, prior to the comment deadline. Following the deadline, all timely written comments will be considered, and DNR may modify this decision based on public comments received.

If DNR determines that public comments in response to this notice indicate the need for significant changes to the decision, additional public notice will be given. If no significant changes are required, the preliminary decision, after any necessary minor changes, will be issued as a final decision. A copy of the final decision, along with instructions on filing an appeal, will be sent to all persons who comment on the preliminary decision. Persons who do not submit written comments during the comment period will have no legal right to appeal the final decision.

**Attachment 1: Development Plan**  
**THAYER CREEK HYDROELECTRIC PROJECT**

**Marine Facility Usage Plan**  
*(Attachment to Alaska DNR Lease Application for Marine Facility)*

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**Appendix – Acronyms and Abbreviations**

## **I. Project Description:**

Kootznoowoo, Inc. proposes to construct a 0.85 MW hydroelectric power generating facility (Thayer Creek Hydroelectric Project or Project) at Thayer Creek on lands within the Tongass National Forest, Admiralty Island National Monument. Thayer Creek is the only watershed close enough to the Village of Angoon, Alaska (Angoon) and outside the Kootznoowoo Wilderness capable of supporting a small hydropower facility that can meet the current and future electric power needs of Angoon. The Project will provide electric power to Angoon, replacing higher cost diesel generators about 97 percent of the time.

In November 2015, the Board of Directors of Kootznoowoo Inc. selected a location at the anadromous barrier falls near the mouth of Thayer Creek for the Project (Figure 1). The Project will utilize the existing natural elevation drop (head) of Thayer Creek and operate run-of-river. The proposed Project has a much smaller footprint and fewer Project effects on natural resources than the option selected and approved by the U.S. Department of Agriculture, Forest Service (Forest Service) in the 2009 Angoon Hydroelectric Project, Record of Decision (ROD).



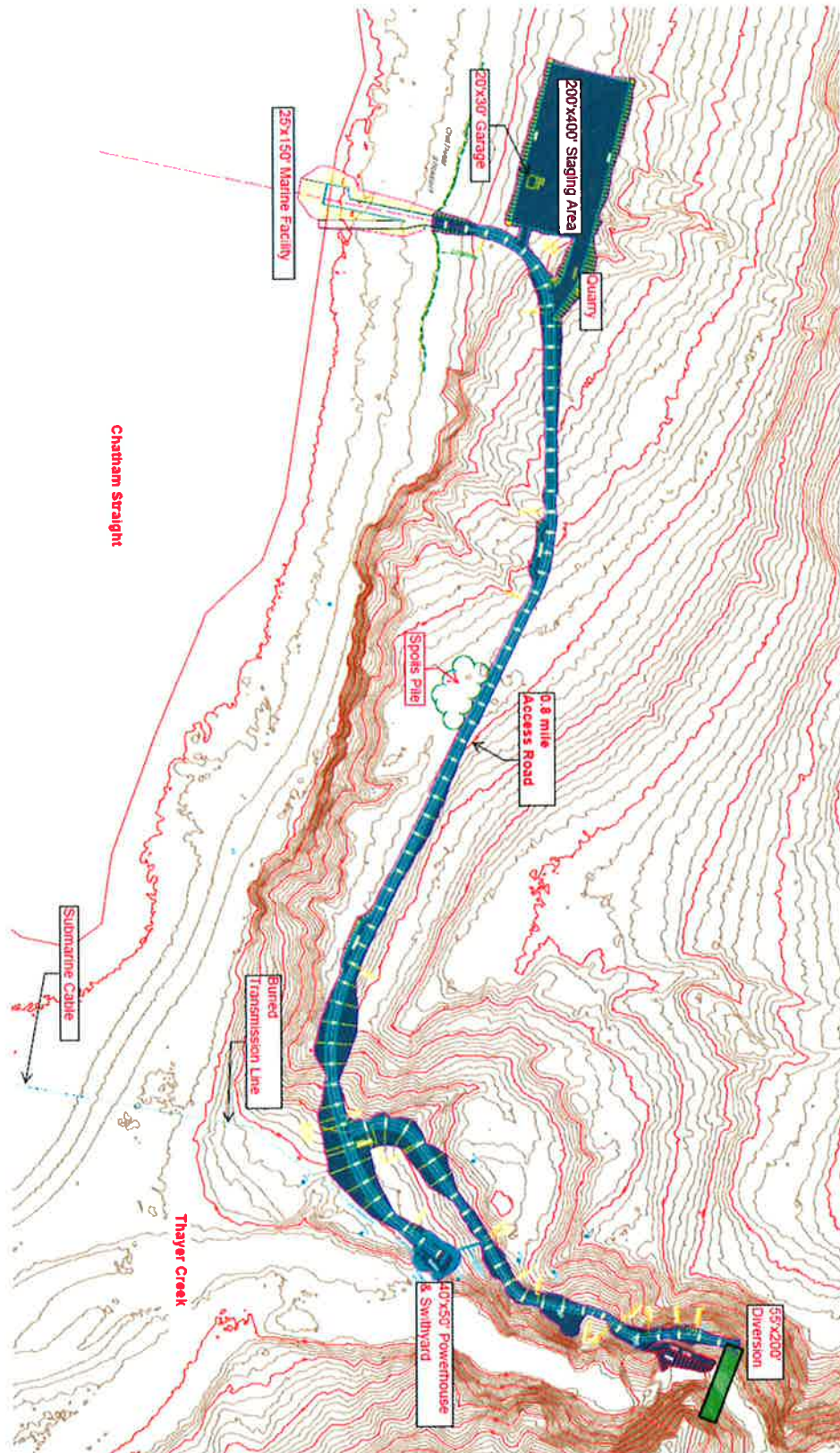


Figure 1: Project Location and Layout



The Project design includes:

- A marine facility north of Thayer Creek to provide sheltered barge and boat access for construction and operations (see Figure 2)
- A 2 acre staging area and quarry located in the forest near the marine facility
- 0.8 miles of access road from the marine facility to the dam and powerhouse
- A 55-foot tall diversion dam located above the barrier falls and about 1200 feet from the Chatham Strait
- A 60-inch 550-foot long penstock from the dam to the powerhouse
- A powerhouse with a 0.85 MW turbine, generator, switchgear and controls
- A switchyard at the powerhouse to provide monitoring and protection,
- An 800-foot long buried 12.5kV transmission line from the powerhouse to the submarine cable in Chatham Strait
- A 6.5 mile 12.5 kV submarine cable going from Thayer Creek to Angoon via Chatham Strait
- A buried or overhead 12.5kV transmission line in Angoon connecting the submarine cable to IPEC's substation.

Based on the work of several engineering and construction firms experienced in hydro development, the preliminary cost estimate for completing development and project construction is \$16 million.

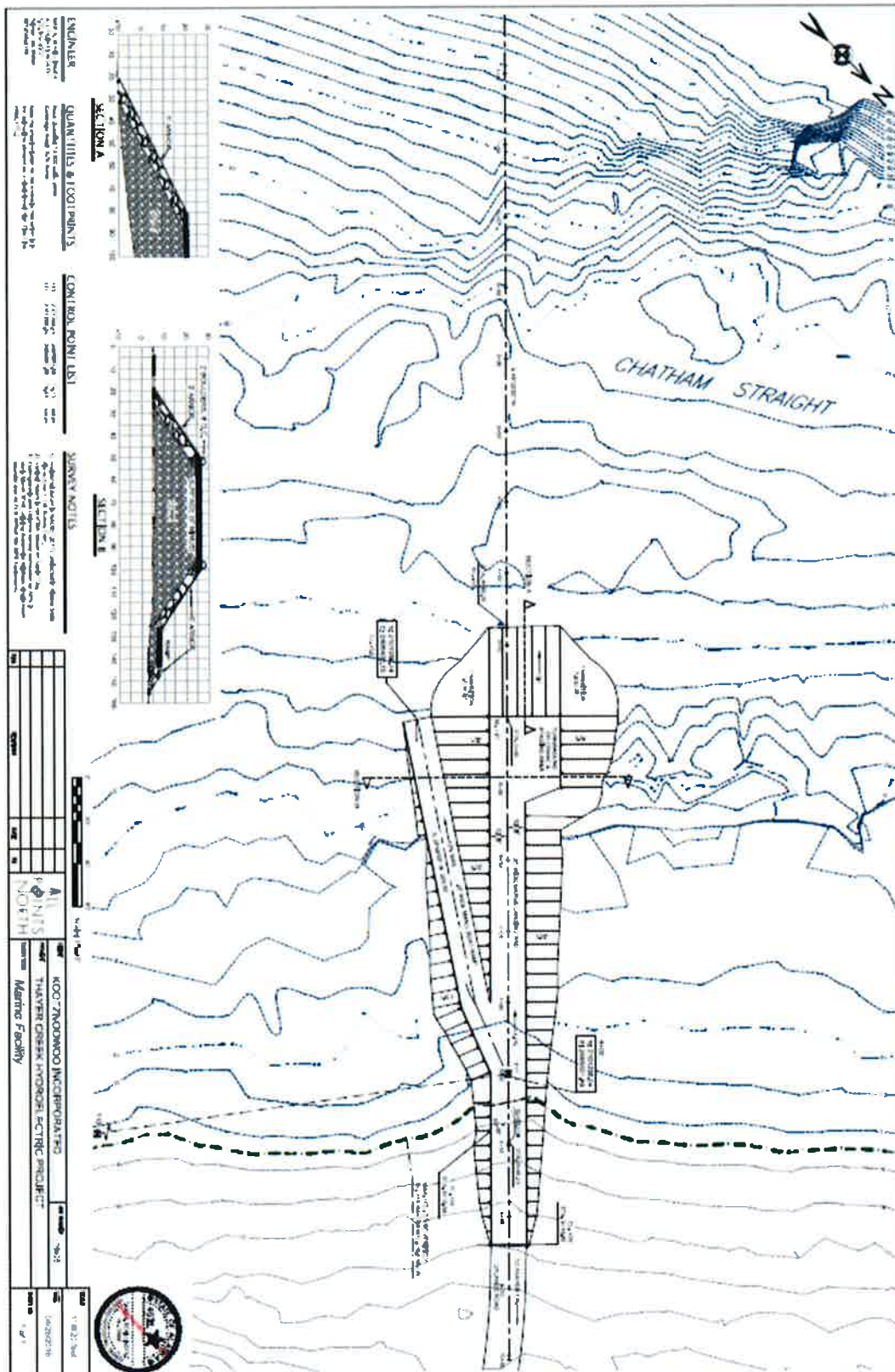
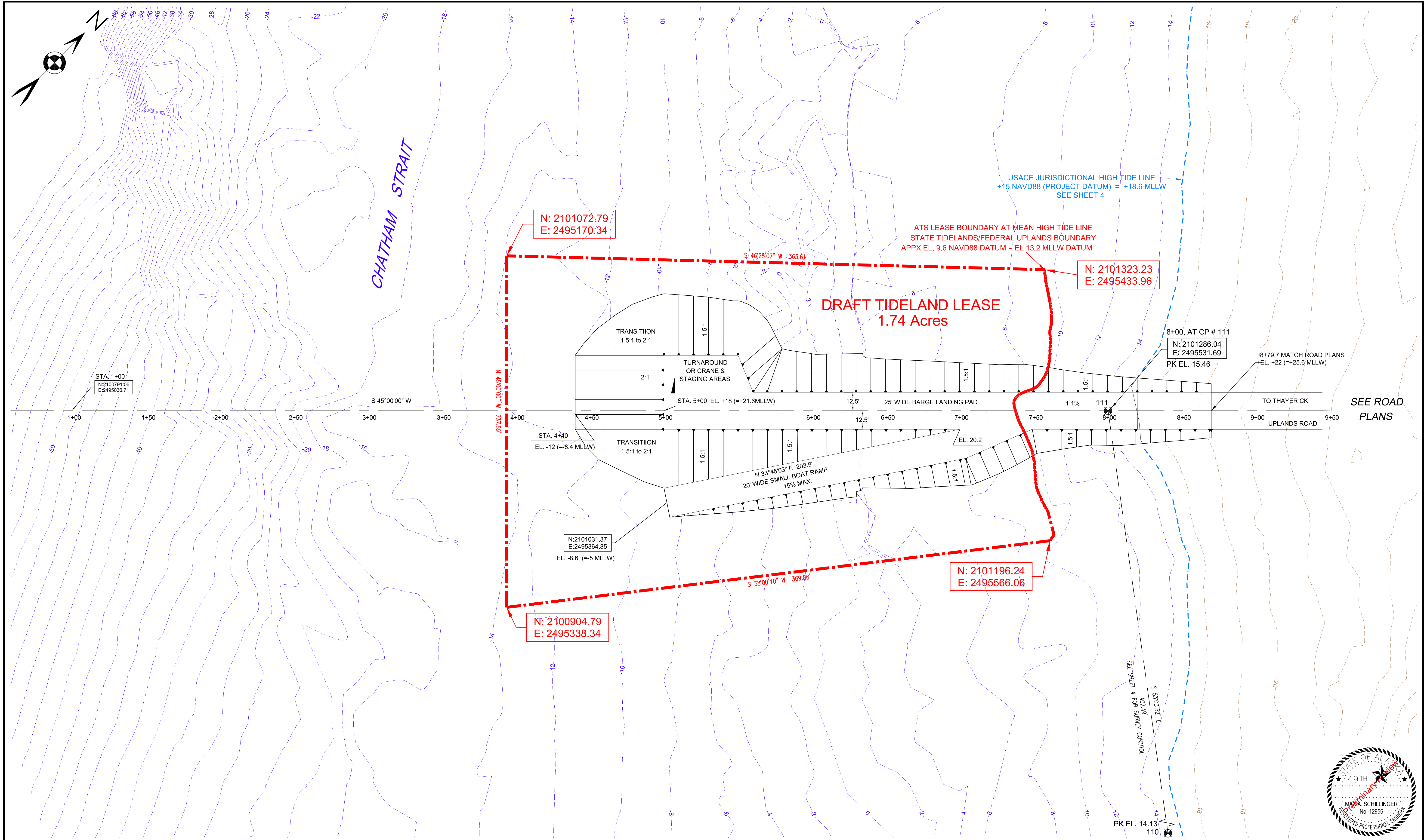
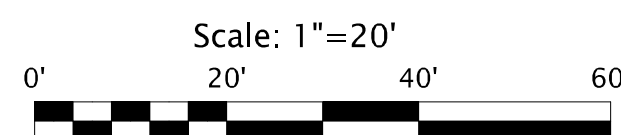


Figure 2: Marine Facility Design



**TIDAL DATUM NOTE**

The difference between Mean Lower Lower Water (MLLW) and NAVD88 (project Datum, Geoid 12a) has been determined onsite by a series of tidal measurements, at 3.6 feet. Thus el. 18.6 MLLW = el. 15.0 NAVD88. Elevation 18.6 MLLW is the USACE Jurisdictional high tide line for the area.



SYM.	REVISIONS	DATE	BY



CLIENT	KOOTZNOOWOO INCORPORATED	JOB NUMBER	16-05
PROJECT	THAYER CREEK HYDROELECTRIC PROJECT		
SHEET TITLE	MARINE FACILITY PLAN <b>TIDELAND LEASE</b>		

SCALE	1" = 20 feet
DATE	3/14/2017
SHEET NO	1 of 1





## **II. Project Development Rights:**

The development rights for the Project were granted to Kootznoowoo Inc. in 1982 by federal statute. Kootznoowoo, Inc., the Angoon village corporation, was created in 1971 when the Alaska Native Claims Settlement Act (ANCSA) was signed into law by President Richard M. Nixon. The law was passed to extinguish all aboriginal land claims in Alaska. As a result, there were 12 regional corporations and over 200 village corporations that were expected to bring sustainable economic benefits to Alaska Natives through a combination of land and cash distributions from Congress. Kootznoowoo, Inc. opted to postpone receiving ANCSA entitlements and rights until 1982 when the Alaska National Interest Lands Conservation Act (ANILCA) was signed by President Jimmy Carter. ANILCA, Section 506, defined Kootznoowoo's ANCSA lands entitlement and rights. One of the ANCSA entitlements was the exclusive right to develop the hydroelectric resources of Thayer Creek just north of Angoon to meet the needs of the village since Angoon was surrounded by federal Monument and Wilderness lands.

## **III. Project Status:**

The conceptual design for the Project has a completed and the detailed engineering is now underway. The Project is also well along in the permitting process. In 2009, the Forest Service selected a larger more complex design in the Angoon Hydroelectric Project, Record of Decision. Using value-engineering techniques, a smaller, lower cost design has been selected that will reduced Project effects on natural resources than the alternatives evaluated in the Final Environmental Impact Statement (FEIS) and ROD. Therefore, the Forest Service requested a change analysis to the ROD. The change analysis was provided to the USFS for review on March 6, 2016. The project will also require permits from Alaska Department of Natural Resources, Alaska Department of Fish and Game, US Fish and Wildlife Services, the Alaska Department of Dam Safety and the U.S. Army Corp of Engineers. Outreach meetings with all of these agencies are underway.

The project engineering, permitting and construction will be competed in two phases. Phase 1 includes site access and initial site preparation for the marine facility, staging area and quarry, access roads, and preliminary site clearing at the powerhouse and dam. Phase 2 includes construction of the powerhouse, dam, penstock, and transmission line.

## **IV. Marine Facility Usage Plan**

The Project site is remote and currently has no established access facilities or roads. The marine facility is designed to provide sheltered barge and boat access. The marine facility barge landing is a 25' wide and 150' long facility to provide barge access, primarily during construction for landing of equipment and materials. Incorporated in the facility is a boat ramp that will enable landing boats during construction and for access for hydropower system operations and maintenance.

### Transportation Activities During Construction – Phase 1

Phase 1 of the project includes construction of the marine facility, access road, staging area and quarry, as well as initial site preparation at the dam and powerhouse sites. Phase 1 of the project construction is estimated to take about 6 to 12 weeks, depending upon whether major project elements are done in parallel or not. This work is described in more detail in the Construction Schedule.

A relatively small crew of 5-10 staff will be needed during Phase 1. Equipment transportation to the site will initially be a barge equipped with a landing ramp that will unload equipment on the beach near Thayer Creek until the marine facility is completed. Given the small crew size, transportation of the crew will average one roundtrip from Angoon to the site per day. Materials for use in the construction of the marine facility will be brought in by barge. This includes a combined total of 13,300 cubic yards of 5' armor rock and 6-10" core rock. Delivery of this material will require about 6 barge trips to the site.

Once the marine facility is completed, materials and crew will use that facility for site access. Gravel and surface rock for the road construction will be stockpiled at the staging area. Since a local quarry is being developed at the Project site, the exact amount of materials needed to be imported by barge to augment what will be produced at the quarry is unknown. But it is estimated that an additional 5 barge deliveries will be required to augment the quarry. It is also expected that materials needed for the dam construction will begin to be stockpiled at the staging area during Phase 1. Total quantities of materials for the dam are estimated to be about 10,000 cubic yards of aggregate and concrete. Some portion of the aggregate may be able to be sourced from the local quarry. But if this is not possible, about 5 barge deliveries will be required to bring in the materials for the dam during 2016 and 2017.

Fuel will also need to be brought in during construction. The current proposal for fuel handling is that during Phase 1 road construction, a 2500 gallon tanker truck will be brought in to provide fuel for the construction vehicles. During Phase 2 construction, two 2500 gallon tanker trucks will be brought in as well as a 5000 gallon tanker trailer. When the tanker truck is empty, the entire truck will be loaded on the barge, refueled and returned as necessary.

### Transportation Activities During Construction – Phase 2

Phase 2 of the project includes construction of the dam, powerhouse, penstock, tailrace and transmission line. This phase of the project is estimated to take about 6-9 months during 2017. The estimated crew size will be about 25-30 people, expected to work five to six ten hour days per week. The current plan is lodge the workers in Angoon and have a boat that makes one round trip from Angoon to the marine facility per day.

Delivery of equipment for dam construction and all other Phase 2 activities is estimate to be 3-4 barge deliveries. Delivery of materials needed for the dam is discussed in the Phase 1 section above. In addition, the 500' penstock will also entail a single barge delivery to the marine facility. The delivery of the turbine and generator, switchgear and controls will also require another barge delivery. And the submarine cable will involve another barge delivery, with the associated equipment to lay the cable which is expected to take 2-3 days.

During Phase 2 construction, the current plan for fuel handling is to bring in two 2500 gallon tanker trucks and a 5000 gallon tanker trailer. When the tanker trailer is empty, the entire trailer will be loaded on the barge, refueled and returned as necessary. Current estimate is that about 100,000 gallons of fuel will be needed during Phase 2, requiring about 20 trips to bring in this amount of fuel. Many of these barge landings will be combined with the equipment and materials delivery described above.

#### Transportation Activities During Operations

The hydropower system and all related equipment will be remotely monitored and controlled from Angoon or Juneau, so no staff will be required on-site. Routine operations, system inspection and required monitoring activities will entail 1-2 trips per month for 1-2 staff per trip. Annual planned maintenance of the hydropower system, dam, roads, etc. is expected to require 5-10 days per year, which will mean a trip from Angoon to the site by 2-5 staff per day.

A double walled 500 gallon fuel tank will be located at the staging area to provide fuel needed for system operations and infrastructure maintenance.

## **APPENDIX A**

### **Acronyms and Abbreviations**

ACOE	U. S. Army Corps of Engineers
ANCSA	Alaska Native Claims Settlement Act
ANILCA	Alaska National Interest Lands Conservation Act
Angoon	Village of Angoon, Alaska
barrier falls	the natural upstream barrier to anadromous fish
ECM Plan	Environmental and Compliance Monitoring Plan
FEIS	Final Environmental Impact Statement
Forest Service	U.S. Department of Agriculture, Forest Service
IPEC	Inland Passage Electric Cooperative
kV	kilovolt
MW	Megawatt
Project	Thayer Creek Hydroelectric Project
ROD	Record of Decision
SUA	Special-Use Authorization

## Attachment 2: Standard Lease Agreement and Special Stipulations

**STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINING, LAND AND WATER  
Southeast Regional Office, 400 Willoughby, P.O. Box 111020  
Juneau, AK 99811-1020, (907) 465-3400**

**ADL No. 108566**

### **LEASE AGREEMENT**

Effective this       day of       , this lease agreement is entered into by the State of Alaska, hereafter referred to as "lessor," and Kootznووoo, Inc., hereafter referred to as "lessee," whether one or more, whose sole addresses for purposes of notification under this lease agreement are listed in section 28.

The lessor and the lessee agree that this lease and all attachments and documents that are incorporated in this lease by reference, contains the entire agreement between the parties, and each of the covenants and conditions in this lease including any attachments will be binding upon the parties and upon their respective successors and assigns. The lessor and the lessee further agree that this lease is conditioned upon satisfactory performance by the lessor and the lessee of all covenants and conditions contained in this lease.

The lessee is aware of the provisions of Title 38, Alaska Statutes, Title 11, Alaska Administrative Code, and other applicable laws, regulations, and ordinances, and fully understands the duties and obligations of the lessee under this lease, and the rights and remedies of the lessor.

This lease is subject to all applicable state, federal, and municipal statutes, regulations, and ordinances in effect on the effective date of this lease, and insofar as is constitutionally permissible, to all statutes, regulations, and ordinances placed in effect after the effective date of this lease. A reference to a statute, regulation, or ordinance in this lease includes any change in that statute, regulation, or ordinance, whether by amendment, repeal and replacement, or other means. This lease does not limit the power of the State of Alaska, its political subdivisions, or the United States of America to enact and enforce legislation or to adopt and enforce regulations or ordinances affecting, directly or indirectly, the activities of the lessee or its agents in connection with this lease or the value of the interest held under this lease. In case of conflicting provisions, statutes, regulations, and ordinances take precedence over this lease. This lease shall not be construed as a grant or recognition of authority for promulgation or adoption of municipal ordinances that are not otherwise authorized.

1. Grant. This lease is issued under the authority of AS 35.05.075(c), for a term of 30 year(s) beginning on the       day of       and ending at 12 o'clock midnight on the       day of       , 204\_ unless sooner terminated, subject to: compensation as specified in section 2; the attached development plan (Attachment B) approved by the state on       ; and attached stipulations (Attachment A), incorporated in and made a part of this lease, for the following, hereafter referred to as the "leasehold":

**Tide and submerged land lease diagram ADL 108566 Located within Section 34, Township 49 South, Range 67 East, Copper River Meridian and contains approximately 1.7 acres more or less as shown on Attachment B.**

Excepting and reserving any general reservations to the lessor that are required by law and that may be stated elsewhere in this lease, and the following, which the state reserves for itself and others:



This lease is subject to all platted easements and reservations and all valid existing rights.

2. Compensation. (a) The lessee shall pay to the lessor compensation as follows, without the necessity of any billing by the lessor: . The lessor may, upon 10 days' notice, review and copy any records of the lessee that are necessary to verify the lessee's compliance with this paragraph.

(b) In accordance with AS 38.05.105, the lease compensation is subject to adjustment by the lessor at the commencement of the sixth year of the term and every fifth year thereafter (the "adjustment date"). The compensation adjustment takes effect on the applicable adjustment date, regardless of whether the adjustment determination occurs before or after that date. All reasonable costs of the adjustment, including reappraisal if required by the lessor, will be borne by the lessee.

3. Denial of Warranty. The lessor makes no warranty, express or implied, nor assumes any liability whatsoever, regarding the social, economic, or environmental aspects of the leasehold, including, without limitation, the soil conditions, water drainage, access, natural or artificial hazards that may exist, or the profitability or fitness of the leasehold for any use. The lessee represents that the lessee has inspected the leasehold and determined that the leasehold is suitable for the use intended, or has voluntarily declined to do so, and accepts the leasehold "as is" and "where is."

4. Use of Leasehold. Prior to execution of this lease and to commencing use or development of the leasehold, the lessee shall submit a development plan for the leasehold to the lessor and obtain the lessor's approval of the plan. Any use or development of the leasehold must be consistent with the development plan approved by the lessor. Any proposed revisions to the development plan must be submitted to the lessor for approval before any change in use or development occurs. The lessee shall use and occupy the leasehold in compliance with the approved development plan and all applicable laws, regulations, ordinances, and orders that a public authority has put into effect or may put into effect, including those of a building or zoning authority and those relating to pollution and sanitation control. The lessee may not permit any unlawful occupation, business, or trade to be conducted on the leasehold. The lessee shall properly locate all activities and improvements on the leasehold, and may not commit waste of the parcel. The lessee shall maintain and repair the leasehold including improvements in a reasonably neat and clean condition, and shall take all necessary precautions to prevent or suppress grass, brush, or forest fires, and to prevent erosion, unreasonable deterioration, or destruction of the land or improvements. The lessee agrees not to place any aboveground or underground fuel or chemical tanks on the leasehold without the prior written approval of the lessor.

5. Encumbrance of Leasehold. The lessee may not encumber or cloud the lessor's title to the leasehold, or any portion of the leasehold, nor enter into any lease, easement, or other obligation of the lessor's title without the prior written approval of the lessor.

6. Assignment of Interest. The lessee may not assign or sublet any interest held under this lease, including a security interest, without the prior written approval of the lessor. The lessor may approve such assignment or subletting if the lessor finds it to be in the best interest of the state. No such assignment or subletting will be effective until approved by the lessor in writing, and the assignee agrees to be subject to and governed by the provisions of this lease, any subsequent amendments to this lease, any additional stipulations, or reappraisal as deemed appropriate by the lessor, and all applicable laws, regulations, and ordinances in the same manner as the original lessee. No assignment or subletting of the leasehold, or any portion thereof, by the lessee will annul the lessee's obligation to pay the compensation required for the full term of this lease. Except as provided in this lease, no subdivision of the leasehold interest may occur without the prior written approval of the lessor.

7. Conditional Lease. If all or part of the leasehold has been tentatively approved, or approved, but not yet patented, by the United States to the lessor, then this lease will be conditioned upon receipt by the lessor of such patent. If for any reason the lessor does not receive patent, any compensation paid to the lessor under this lease will not be refunded. Any prepaid compensation for land to which patent is denied the lessor will be refunded to the lessee of record in the amount of the pro-rata portion of the unexpired term. The lessor will have no further liability to the lessee for the termination of the lease.

8. Payment of Taxes and Assessments. The lessee shall pay prior to delinquency all taxes and assessments accruing against the leasehold.

9. Section Line Rights-of-Way. If the leasehold borders on or includes one or more section lines, the lessor hereby expressly reserves unto itself and its successors and assigns a right-of-way or rights-of-way pursuant to AS 19.10.010.

10. Navigable and Public Waters. (a) Pursuant to AS 38.05.127 and 11 AAC 53.330, the lessor reserves a public access easement to and along all public or navigable water bodies that border on or are included in this leasehold. No public access easement may be obstructed or otherwise rendered incapable of reasonable use for the purposes for which it was reserved. No public access easement may be vacated, abandoned, or extinguished without the prior written approval of the lessor.

(b) The Public Trust Doctrine guarantees public access to, and the public right to use, navigable and public waters and the land beneath them for navigation, commerce, fishing, and other purposes. This lease is issued subject to the principles of the Public Trust Doctrine regarding navigable or public waters. The lessor reserves the right to grant other interests to the leasehold consistent with the Public Trust Doctrine.

11. Condemnation of Leasehold or Improvements. If the whole or any part of the leasehold is taken by any authorized body or person vested with the power of eminent domain, by negotiation, court action, or otherwise, the following provisions control:

(1) Taking of the entire leasehold. If all of the leasehold is taken by condemnation, this lease and all rights of the lessee will immediately terminate, and the compensation will be adjusted so that it is due only until the date the lessee is required to surrender possession of the leasehold. The lessor is entitled to all the condemnation proceeds, except that the lessee will be paid the portion of the proceeds attributable to the fair market value, as determined in the condemnation proceedings, of any buildings or improvements taken that were placed on the condemned leasehold by the lessee in accordance with the approved development plan.

(2) Taking of substantial part of the leasehold. If the taking is of a substantial part of the leasehold, the following rules apply:

(A) If the taking by condemnation reduces the ground area of the leasehold by at least 30 percent or materially affects the use being made by the lessee of the leasehold, the lessee has the right to elect to terminate the lease by written notice to the lessor not later than 180 days after the date of taking.

(B) If the lessee elects to terminate, the provisions in subsection (1) of this section govern the condemned portion of the leasehold and the covenants and conditions of the lease govern disposal of the remainder of any buildings or improvements made by the lessee in accordance with the approved development plan.

(C) If the lessee does not elect to terminate, the lease continues and the lessor is entitled to the full condemnation proceeds except the portion attributable to the fair market value, as determined in the condemnation proceedings, of any buildings or improvements taken that were placed on the condemned portion of the leasehold by the lessee in accordance with the approved development plan. Compensation at the existing rate will terminate on the date the lessee is required to surrender possession of the condemned portion of the leasehold. Except as it may be adjusted from time to time under the covenants and conditions of the lease and applicable statutes, compensation for the balance of the term will be adjusted by the lessor to reflect the taking.

(3) Taking of insubstantial part of the leasehold. If the taking by condemnation reduces the ground area of the leasehold by less than 30 percent and the lessor determines that the taking is of such an insubstantial portion that the lessee's use of the leasehold is not materially affected, the lessee may not elect to terminate the lease and the compensation provisions of subsection 2(C) of this section will govern.

12. Valid Existing Rights. This lease is subject to all valid existing rights, including easements, rights-of-way, reservations, or other interests in land in existence on the date of execution of this lease.

13. Inspection. The lessor will have reasonable access to the leasehold for purposes of inspection.

14. Mineral Reservations. This lease is subject to the reservations required by AS 38.05.125 and the rights and obligations imposed by AS 38.05.130.

15. Concurrent Use. This lease is subject to reasonable concurrent uses as provided under Article VIII, Section 8 of the Constitution of the State of Alaska. The concurrent user who is found to be at fault for damage or injury arising from noncompliance with the terms governing the user's concurrent use is liable for damages and the user's interest is subject to forfeiture or termination by the lessor. In this context, the term "concurrent user" includes the lessee and any other person or entity who lawfully uses the land subject to this lease, but does not include the State of Alaska.

16. Surface Resources. Unless otherwise provided by this lease or other written authorization, the lessee may not sell or remove from the leasehold any timber, stone, gravel, peat moss, topsoil, or any other material valuable for building or commercial purposes. Material required for the development of the leasehold may be used only in compliance with the approved development plan.

17. Appropriation or Disturbance of Waters. During the term of this lease, the lessee will have the right to apply for an appropriation of ground or surface water on the leasehold in accordance with AS 46.15 and 11 AAC 93.060.

18. Acquisition of Rights or Interests. Any right or interest acquired during the term of this lease and accruing to the benefit of the leasehold will remain appurtenant to the leasehold, and may not be severed or transferred from the leasehold without the prior written approval of the lessor. In the event of termination or forfeiture of this lease, any such right or interest will vest in the lessor.

19. Land Alterations Due to Natural or Artificial Causes. The interest described in this lease constitutes the entire leasehold. If, through natural or artificial causes, accretion or reliction of land occurs contiguous to the leasehold, the Lessee has no right to occupy or use the accreted land unless a separate lease is entered with the Lessor with respect to such lands. The rules of law usually applicable to accretion or reliction of land do not apply to this lease, nor to the interest

described in this lease.

20. Waiver or Forbearance. The receipt of compensation by the lessor, with or without knowledge of any default on the part of the lessee, is not a waiver of any provision of this lease. No failure on the part of the lessor to enforce a covenant or condition of this lease, nor the waiver of any right under this lease by the lessor, unless in writing, will discharge or invalidate the application of such covenant or condition. No forbearance or written waiver affects the right of the lessor to enforce any covenant or condition in the event of any subsequent default. The receipt of compensation by the lessor after termination or any notice of termination will not reinstate, continue, or extend this lease, or destroy, or in any manner impair the validity of any notice of termination that may have been given prior to receipt of the compensation, unless specifically stated by the lessor in writing.

21. Default and Remedies. (a) Time is of the essence in this lease. If the lessee defaults on the performance of any of the covenants or conditions of this lease, and the default is not remedied within 60 days after the lessor issues written notice of such default to the lessee and to the holder of a security interest in the leasehold approved by the lessor, or within any additional period the lessor allows for good cause, the lessee will be subject to legal or any other administrative action deemed appropriate by the lessor, including termination of this lease. The lessor may, in the notice of the default or in a separate written notice, state that if the default is not remedied, this lease shall terminate on a date certain, which shall be at least 60 days after issuance of the notice of default. Upon the date specified in such notice, unless the default has been remedied, the lease shall expire automatically without further notice or action by the lessor and this lease and all rights of the lessee under the lease shall terminate. Upon termination of the lease the lessor shall have an immediate right to possession of the leasehold and any possession by the lessee shall be unlawful. It is specifically agreed that no judicial action shall be necessary to terminate this lease or to allow the lessor to retake possession in the event of default by the lessee. No improvements may be removed from the leasehold while the lease is in default except with the lessor's prior written approval. If this lease is terminated for default, all compensation paid by the lessee is forfeited to the lessor. The lessor is not liable for any expenditures made or undertaken by the lessee under this lease. Any costs or fees, including attorney's fees, reasonably incurred by the lessor for the enforcement of this lease, shall be added to the obligations due and payable by the lessee.

(b) The rights, if any, of third-party security interest holders or lienholders are controlled solely by AS 38.05.103 and 11 AAC 58.590. If the lessee fails to remedy the default within the time allowed in subsection (a) of this section, the holder of an approved security interest who has received notice under subsection (a) of this section may remedy the default. The holder shall act within 60 days from the date of receipt of notice under subsection (a) of this section, or within any additional period the lessor allows for good cause.

(c) The lessor may, at the lessor's option, following the lessee's default and failure to remedy, or after termination of this lease due to such default and failure to remedy, accelerate the unpaid compensation for the remainder of the term of this lease. The lessee's obligation to pay such accelerated rent to the lessor survives termination of this lease.

(d) If this lease is terminated, or all or any portion of the leasehold is abandoned by the lessee, the lessor may immediately enter, or re-enter and take possession of the leasehold, and without liability for any damage, remove all persons and property from the leasehold and may, if necessary, use summary proceedings or an action at law. The words "enter" and "re-enter" as used are not restricted to their technical legal meaning. Any entry, re-entry, possession, repossession, or dispossession by the lessor, whether taken with or without judicial action, does not absolve, relieve, release, or discharge the lessee, either in whole or part, of any liability under the lease.

(e) The lessor, upon or at any time after giving written notice of any default, may enter or re-enter the leasehold to remedy any default by the lessee or exercise any right given under this lease, all without the intervention of any court being required. The curing of such default shall not be deemed for any purpose to be for the benefit of the lessee.

(f) At any time after termination of this lease, the lessor may re-let the leasehold, or any part thereof, in the name of the lessor for such term and on such conditions as the lessor may determine, and may collect and receive the compensation therefor. The lessor shall not be responsible or liable for failure to re-let the leasehold or for any failure to collect any compensation due upon such re-letting, nor shall the lessor be required to account for or pay to the lessee any excess compensation received as a result of such re-letting. The lessee shall be liable for any deficiency, and for all costs, expenses, and fees incurred by the lessor arising out of the default, including the lessor's efforts to re-let the leasehold.

(g) No right or remedy conferred upon or reserved to the lessor in this lease or by statute, or existing in law or equity, is intended to be exclusive of any other right or remedy, and each and every right shall be cumulative.

22. Disposition of Improvements and Chattels After Termination. AS 38.05.090 will govern disposition of any lessor-approved chattels or improvements left on the leasehold after termination. At the lessor's sole option, improvements not approved by the lessor shall be removed from the leasehold and the site restored to its original condition at the lessee's sole expense, or be forfeited to the lessor. The lessee shall be liable to the lessor for any costs, expenses, or damages arising out of the disposition of improvements not approved by the lessor, and may be required to pay rent on any improvements or chattels left on the parcel in accordance with 11 AAC 58.680.

23. Indemnity to Lessor. The lessee shall indemnify, defend, and hold the lessor harmless from and against all claims, demands, judgments, damages, liabilities, penalties, and costs, including attorney's fees, for loss or damage, including but not limited to property damage, personal injury, wrongful death, and wage, employment, or worker's compensation claims, arising out of or in connection with the use or occupancy of the leasehold by the lessee or by any other person holding under the lessee, or at the lessee's sufferance or invitation; and from any accident or fire on the leasehold; and from any nuisance made or suffered on the leasehold; and from any failure by the lessee to keep the leasehold in a safe and lawful condition consistent with applicable laws, regulations, ordinances, or orders; and from any assignment, sublease, or conveyance, attempted or successful, by the lessee of all or any portion of the leasehold or interest therein contrary to the covenants and conditions of this lease. The lessee holds all goods, materials, furniture, fixtures, equipment, machinery, and other property whatsoever on the parcel at the sole risk of the lessee, and shall defend, indemnify and hold the lessor harmless from any claim of loss or damage by any cause whatsoever, including claims by third parties.

24. Insurance. The lessee shall obtain insurance in an amount determined by the lessor to be sufficient. The lessor shall be named as an additional insured party of any such insurance. The types and amount of insurance shall be specified in the attached stipulations made a part of this lease agreement and may be adjusted periodically. The lessee shall maintain that insurance as long as required by the lessor. Any insurance acquired by the lessee for the purpose of providing insurance coverage under this lease must be issued by an insurer authorized to do business in the State of Alaska under the provisions of AS 21.09.010 and AS 21.27.010 for the type of policy being written.

25. Bonding. The lessee shall furnish a bond, cash deposit, certificate of deposit, or other form of security acceptable to the lessor in an amount determined by the lessor to be sufficient to ensure

faithful performance of the covenants and conditions of this lease, and to cover the cost of site cleanup and restoration and any associated costs after termination of the lease. The amount and conditions of the bond shall be specified in the attached stipulations made a part of this lease agreement. The lessee shall maintain the bond as long as the lessor deems necessary, and in the amount required by the lessor, which amount may be adjusted periodically.

26. Environmental Compliance. (a) The lessee shall, at the lessee's own expense, comply with all existing and hereafter enacted environmental responsibility laws ("Environmental Laws"). The lessee shall, at the lessee's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Environmental Laws.

(b) Should the Authority require that a remedial action plan be prepared and that a remedial action be undertaken because of the presence of, or any disposal, release, spill, or discharge, or threatened disposal, release, spill, or discharge of or contamination by hazardous materials at the leasehold that occurs during the term of this lease or arises out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease, then the lessee shall, at the lessee's own expense, prepare and submit the required plans and financial assurances and carry out the approved plans. The lessee's obligations under this section shall arise if there is any event or occurrence at the leasehold during the term of this lease, or arising out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease, that requires compliance with the Environmental Laws.

(c) At no expense to the lessor, the lessee shall promptly provide all information requested by the lessor for preparation of affidavits or other documents required by the lessor to determine the applicability of the Environmental Laws to the leasehold, and shall sign the affidavits promptly when requested to do so by the lessor.

(d) The lessee shall indemnify, defend, and hold harmless the lessor from all fines, penalties, suits, judgements, procedures, claims, demands, liabilities, settlements, and actions of any kind arising out of or in any way connected with the presence of or any disposal, release, spill, or discharge or any threatened disposal, release, spill, or discharge of or contamination by hazardous materials at the leasehold that occurs during the term of the lease or arises out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease; and from all fines, penalties, suits, judgements, procedures, claims, demands, liabilities, settlements, and actions of any kind arising out of the lessee's failure to provide all information, make all submissions, and take all steps required by the Authority under the Environmental Laws or any other law concerning any spill, discharge, or contamination that occurs during the term of this lease or arises out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease.

(e) The lessee agrees that it will not discharge or dispose of or suffer the discharge or disposal of any petroleum products, gasoline, hazardous chemicals, or hazardous materials into the atmosphere, ground, wastewater disposal system, sewer system, or any body of water.

(f) In any court action or administrative proceeding, in addition to all other applicable presumptions, it shall be rebuttably presumed that any environmental contamination of the leasehold (i) has been released on the leasehold; (ii) has resulted from acts or omissions of the lessee or its agents; and (iii) has occurred during the term of this lease. The lessee has the burden of rebutting the presumptions by clear and convincing evidence.

(g) This section of this lease does not in any way alter the State of Alaska's powers and rights or the lessee's duties and liabilities under Title 46 (or its successor) of the Alaska Statutes or other state,

federal, or municipal statutes, regulations, or ordinances. For example, notwithstanding the provisions of this lease, the State of Alaska shall not be precluded from claiming under AS 46.03.822 that the lessee is strictly liable, jointly and severally, for damages and costs incurred by the state for cleanup of contamination on the leasehold. The obligations and provisions of this section 26 shall survive the termination of this lease.

(h) As used in this lease, the term "hazardous materials" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any municipal governmental authority, the State of Alaska, or the United States government.

27. Surrender of Leasehold. Upon the expiration, termination, or cancellation of this lease, the lessee shall peacefully leave and deliver up all of the leasehold in good, sanitary, and marketable condition, order, and repair.

28. Notices. (a) Any notice or demand by the lessee will be made by hand delivery to the Director, Division of Mining, Land and Water, or by certified mail, postage prepaid, addressed as follows (or to a new address that the lessor designates in writing), with delivery occurring upon receipt by the lessor:

To the Lessor:

Division of Mining, Land and Water  
550 W. 7<sup>th</sup> Avenue, Suite 1070  
Anchorage, Alaska 99501-3579

(b) Any notice or demand by the lessor will be issued as provided in 11 AAC 02.040(c). If issuance is by mail, the notice or demand will be addressed as follows (or to a new address that the lessee or its successor in interest designates in writing):

To the Lessee:

Kootznoow, Inc.  
8585 Old Dairy Rd., Suite 104  
Juneau, AK 99801

The lessor will issue a copy of any such notice or demand to each holder of a security interest in the leasehold whose assignment has been approved by the lessor under section 6 of this lease. Any security interest not approved as provided in section 6 is insufficient to require notice by the lessor under AS 38.05.103.

(c) Any notice or demand regarding the lease must be in writing and will be complete if given as set out above.

29. Penalty Charges. The lessee shall pay a fee for any late payment or returned check issued by the lessee as follows:

(1) Late Payment Penalty: The greater of either the fee specified in 11 AAC 05.010 or interest at the rate set by AS 45.45.010(a) will be assessed on a past-due account until payment is received by the lessor. Acceptance of a late payment or of a service charge for a late payment is subject to the lessor's rights under sections 20 and 21 of this lease.

(2) Returned Check Penalty: A returned check fee as provided in 11 AAC 05.010 will be assessed

for any check on which the bank refuses payment. If the bank refuses payment, the default termination date remains the same. Late penalties under subsection (1) of this section shall continue to accumulate.

30. Modification. This lease may be modified or amended only by a document signed by both parties. Any purported amendment or modification has no legal effect until placed in writing and signed by both parties.

31. Choice of Law. This lease shall be construed under the laws of the State of Alaska. The lessee confers personal jurisdiction on the courts of the State of Alaska for any litigation under this lease.

32. Severability of Clauses of Lease Agreement. If any clause or provision of this lease is, in a final judicial proceeding, determined illegal, invalid, or unenforceable under present or future laws, then the lessor and the lessee agree that the remainder of this lease will not be affected, and in lieu of each clause or provision of this lease that is illegal, invalid, or unenforceable, there will be added as a part of this lease a clause or provision as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.



By signing this lease, the lessor and the lessee agree to be bound by its provisions.

LESSEE:

\_\_\_\_\_

LESSOR:

\_\_\_\_\_

Director, Division of Mining, Land and Water

APPROVED:

\_\_\_\_\_

Commissioner,  
Department of Natural Resources

STATE OF ALASKA            )  
  ) ss.  
\_\_\_\_\_**Judicial District**        )

THIS IS TO CERTIFY THAT ON THIS \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the person named and who signed the foregoing lease and acknowledged voluntarily signing the same.

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My commission expires: \_\_\_\_\_

STATE OF ALASKA            )  
  ) ss.  
\_\_\_\_\_**Judicial District**        )

THIS IS TO CERTIFY THAT ON THIS \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, of the Division of Mining, Land and Water of the Department of Natural Resources of the State of Alaska, who executed the foregoing lease on behalf of the State of Alaska, and who is fully authorized by the State to do so.

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My commission expires: \_\_\_\_\_

Approved as to form February 9, 1994, and September 25, 2001.

\_\_\_\_\_  
/s/ Elizabeth J. Barry, Assistant Attorney General

**Recorder's Office: Return the recorded document to:**

**LEASE AGREEMENT  
ADL 108566  
ATTACHMENT A  
SPECIAL STIPULATIONS**

1. Authorized Officer (AO). The Authorized Officer (AO) for the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW) is the Southeast Regional Manager or designee. The AO may be contacted at 400 W. Willoughby Avenue, Juneau, Alaska 99811-1020 or 907-465-3400.
2. Alaska Historic Preservation Act. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered within the authorization area, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation shall be notified immediately at (907) 269-8721.
3. Leasehold Development and Use. The development of the leasehold shall be limited to the area and improvements specified in the attached development plan/plan of operations dated **May 31, 2016 (Attachment B)** or subsequent modifications approved by the AO. The Lessee is responsible for accurately siting development and operations within this area. Any proposed revisions to the development plan/plan of operations must be approved in writing by the AO before the change in use or development occurs.
4. Amendment or Modification. To amend or modify the uses allowed under this authorization, the Lessee shall submit a request in writing to the AO. Any amendment or modification must be approved by the AO and may require additional fees. Any purported amendment or modification has no legal effect until placed in writing and signed by both parties.
5. Maintenance. The leasehold shall be maintained in a neat, clean and safe condition, free of any solid waste, debris or litter. The State assumes no responsibility for maintenance of improvements constructed on State land or liability for injuries or damages attributable to that construction.
6. Wastewater Disposal. Disposal of wastewater from any operation associated with this Lease to state lands or water is specifically prohibited, unless otherwise approved by the Alaska Department of Environmental Conservation (ADEC).
7. Solid Waste. All solid waste, debris, and litter generated from the activities conducted under this authorization shall be removed to a facility approved by the Alaska Department of Environmental Conservation on a routine and timely basis. Temporary storage and accumulation of solid waste prior to its removal shall meet the following requirements: (1) Solid waste shall be stored in a manner that prevents a litter violation under AS 46.06.080; (2) Putrescible wastes (material that can decompose and cause obnoxious odors) shall be stored in a manner that prevents attraction of or access to wildlife or disease vectors; (3) The premises shall be maintained free of solid waste that might create a health or safety hazard.
8. Fuel and Hazardous Substances. The use and/or storage of hazardous substances by the Lessee must be done in accordance with existing federal, state and local laws, regulations and ordinances.

Debris (such as soil) contaminated with used motor oil, solvents, or other chemicals may be classified as a hazardous substance and must be removed and disposed of in accordance with existing federal, state and local laws, regulations and ordinances. "Hazardous substances" are defined under AS 46.03.826(5) as (a) an element or compound which, when it enters the atmosphere, water, or land, presents an imminent and substantial danger to the public health or welfare, including fish, animals, or vegetation; (b) oil; or (c) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

Containers with a total capacity larger than 55 gallons which contain fuel or hazardous substances shall not be stored within 100 feet of a waterbody. Containers which exceed a total combined capacity of 110 gallons must be stored within secondary containment. "Secondary containment" means an impermeable diked area or portable impermeable containment structure capable of containing 110 percent of the volume of the largest independent container. Double-walled tanks do not qualify as secondary containment unless an exception is granted for a particular tank. All piping and manifolds shall be within secondary containment.

During equipment maintenance operations, the leasehold shall be protected from leaking or dripping hazardous substances or fuel. The Lessee shall place drip pans or other surface liners designed to catch and hold fluids under the equipment or develop a maintenance area by using an impermeable liner or other suitable containment mechanism. "Surface liner" means any safe, non-permeable container (e.g., drips pans, fold-a-tanks, etc.) designed to catch and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume based on worst-case spill risk.

To ensure future use of public lands as well as tide and submerged lands, fuel and hazardous substance use shall occur in a manner that avoids toxic discharge and run-off. Reasonable precautions and controls must be used to prevent incidental and accidental discharge of petroleum products or other hazardous substances. Fuel handling activities must be conducted so there is no petroleum contamination of the water body.

Vehicle refueling shall not occur within the annual floodplain or below Ordinary High Water Mark or Mean High Water. This restriction does not apply to water-borne vessels.

9. Spill Notification. The Lessee shall immediately notify Alaska Department of Environmental Conservation by telephone, and immediately afterwards send Alaska Department of Environmental Conservation a written notice by facsimile, hand delivery, or first class mail, informing Alaska Department of Environmental Conservation of: any unauthorized discharges of oil to water, any discharge of hazardous substances other than oil; and any discharge or cumulative discharge of oil greater than 55 gallons solely to land and outside an impermeable containment area. If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, the lessee or Lessee shall report the discharge within 48 hours, and immediately afterwards send Alaska Department of Environmental Conservation a written notice by facsimile, hand delivery, or first class mail. Any discharge of oil, including a cumulative discharge, solely to land greater than one gallon up to 10 gallons must be reported in writing on a monthly basis. The posting of information requirements of 18 AAC75.305 shall be met. The provisions of 18 AAC 75.310 (Scope and Duration of Initial Response Actions) and other reporting requirements of 18 AAC 75.300 – 18 AAC 75.396 also apply. The lessee or Lessee shall supply Alaska Department of Environmental Conservation with all follow-up incident reports. Notification of a discharge must be made to the nearest Alaska Department of Environmental Conservation Area Response Team during working hours: Juneau (907) 465-5340, fax

(907) 465-2237. The Alaska Department of Environmental Conservation oil spill report number outside normal business hours is (800) 478-9300. The lessee shall supply Alaska Department of Environmental Conservation with all follow-up incident reports. Notification of a discharge must be made to the nearest Alaska Department of Environmental Conservation Area Response Team during working hours: Juneau (907) 465-5340, fax (907) 465-2237. The DNR 24-hour report number is (907) 451-2678; the fax number is (907) 451-2751. DNR or the appropriate land manager and Alaska Department of Environmental Conservation shall be supplied with all follow-up incident reports.

10. Performance Guaranty. Lessee shall provide and maintain a surety bond or other form of security acceptable to DMLW in the amount of \$75,000 payable to the State of Alaska. The performance guaranty shall remain in effect until the construction phase of the hydropower project is completed to secure performance of the Lessee's obligations hereunder. The amount of the performance guaranty may be adjusted by the AO upon approval of amendments to this authorization, changes in the development plan, changes to the project timeline, changes in the activities conducted on the premises, and for increased risks to state lands and resources. The performance guaranty may only be released in writing by the AO after approval of the Lessee's construction completion report (see stipulation 11).

The performance guaranty may be utilized by DMLW to cover actual costs incurred by the State of Alaska to pay for any necessary corrective actions in the event the Lessee does not comply with the leasehold utilization, restoration requirements and other stipulations contained in the lease agreement. If the Lessee fails to perform the obligations under the authorization within a reasonable timeframe, the State may perform the Lessee's obligations at the Lessee's expense. Lessee agrees to pay within 20 days following demand, all costs and expenses incurred by the State of Alaska as a result of the failure of the Lessee to comply with the terms and conditions of the authorization. Failure to do so may result in the termination of the authorization and/or forfeiture of the performance guaranty.

Any provisions of the lease agreement shall not prejudice the State's right to obtain a remedy under any law or regulation. If the AO determines that Lessee has satisfied the terms and conditions of the land use authorization, the performance guaranty will be subject to release.

11. Construction Completion Report

Upon completion of the project's construction phase, Grantee shall submit a construction completion report to DNR DMLW for the AO's approval. This report shall contain, at a minimum, the Alaska tideland Survey and as-built exhibits.

12. Insurance. Per section 24 of the lease document, the Lessee shall secure or purchase at its own expense, and maintain in force at all times during the term of this lease, the following policies of insurance to protect both the Lessee and the Lessor (the State, its officers, agents and employees). If the Lessee's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits.

**Commercial General Liability Insurance Policy:** Such policy shall have minimum coverage limits of no less than \$1,000,000 combined single limit per occurrence.

**Workers' Compensation Insurance:** The applicant shall provide and maintain, for all its employees, Workers' Compensation Insurance as required by AS 23.30.045. Where applicable, coverage must comply with any other statutory obligations, whether Federal (i.e., U.S.L.&H., or,

Jones Act) or other state laws in which employees are engaged in work on the leased premises. The insurance policy must contain a waiver of subrogation clause in favor of the State of Alaska.

Certificates of Insurance must be furnished to the Authorized Officer prior to the issuance of this lease and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. The Lessee must provide for a 60-day prior notice to the State before they cancel, not renew or make material changes to conditions to the policy. Failure to furnish satisfactory evidence of insurance, or a lapse of the policy, are material breaches of this lease and shall be grounds, at the option of the State, for termination of the lease. All insurance policies shall comply with, and be issued by, insurers licensed to transact the business of insurance under Alaska Statute, Title 21. The policy shall be written on an "occurrence" form and shall not be written as a "claims made form" unless specifically reviewed and agreed to by the Division of Risk Management, Department of Administration. The State must be named as an additional named insured on the policy with respect to the operations of the Lessee on or in conjunction with the leased premises, referred to ADL 108566. The DNR authorization number must be referenced on the Certificate of Insurance.

13. Request for Data/Additional Information. For purposes of information and review, the AO at any time during normal business hours, may require the Lessee to furnish data related to preconstruction or construction activities undertaken in connection with the project. The Lessee shall furnish the required data as soon as possible or as otherwise required under the terms of the authorization.
14. Public Access and Temporary Closure. Pursuant to AS 38.05.127(a)(1), and section 10 of the lease document, a fifty (50) foot public access easement is reserved seaward of mean high water. Pursuant to provisions of AS 38.05.127(a)(2) this easement may be temporarily closed to public access for short periods when construction operations are occurring that may pose a risk to public safety. DMLW will defer to the Lessee to determine the appropriate level of notification to be provided to the public should temporary closure occur. If DMLW received notification of concerns or issues related to access at this site, DMLW may require alternative measures to address site-specific access issues to ensure that public access can be reasonably provided.
15. Other Authorizations. The Lessee shall, at its expense, comply with all applicable laws, ordinances, regulations, rules and orders, and the requirements and stipulations included in this authorization. Lessee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees. The issuance of this authorization does not alleviate the necessity of the Lessee to obtain all other required authorizations for this activity. Failure to obtain said authorizations shall constitute a violation of this authorization, subject to action as described herein.
16. Inspections. Authorized representatives of the State of Alaska shall have reasonable access to the subject parcel for purposes of inspection and may inspect the authorized area at any time without notice. The Lessee may be charged fees under 11 AAC 05.010(a)(7)(M) for routine inspections of the subject parcel, inspections concerning non-compliance, and a final close-out inspection.
17. Violations. Pursuant to 11 AAC 96.145, a person who violates a provision of this authorization is subject to any action available to the DNR for enforcement and remedies, including revocation of the authorization, civil action for forcible entry and detainer, ejectment, trespass, damages, and associated costs, or arrest and prosecution for criminal trespass in the second degree. The DNR may seek damages available under a civil action, including restoration damages, compensatory damages, and treble damages under AS 09.45.730 or 09.45.735 for violations involving injuring or removing trees or shrubs, gathering geotechnical data, or taking mineral resources.

18. Incurred Expenses. All expenses incurred by the Lessee connected with the exercise of the privileges covered by this authorization shall be borne solely by the Lessee and the State of Alaska shall in no way be held liable for said expenses.
19. Relinquishment of Lease and Restoration. No later than three (3) years prior to the lease expiration, the Lessee shall file with the AO:
- (1) A complete application to request a new lease, and/or
  - (2) A restoration plan for the leasehold, which must be approved in writing by the AO. Lessee is responsible for leasehold restoration.
    - a. In the restoration plan, the Lessee shall document their intent to remove and identify those improvements to be removed.
    - b. The plan must describe the methods and techniques that will be used to restore the leasehold to a safe, clean and environmentally acceptable condition.
    - c. The plan must also include a schedule of restoration phases and specific time lines for the completion of each phase. Restoration must be completed on or before lease expiration.
    - d. The AO may require an appropriate performance guarantee to be posted within three years of the end of the lease or at any time the AO reasonably determines that such performance guaranty is required to protect the State of Alaska.

Relinquishment of interest in this lease cannot occur until the leasehold is restored in accordance with an approved restoration plan. The restoration plan is subject to the approval of the AO. The Lessee will not be relieved of the obligations set forth in the lease until the Lessee demonstrates the leasehold has been restored in accordance with the approved restoration plan.

20. Destruction of Markers. All survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, National Register of Historic Places plaques, interpretive panels and unsurveyed lease corner posts shall be protected against damage, destruction, or obliteration. The Lessee shall notify the AO of any damaged, destroyed, or obliterated markers and shall reestablish the markers at the Lessee's expense in accordance with accepted survey practices of the DMLW.
22. Preference Right. Because this authorization is predicated on AS 38.05.075(c), upland ownership or a valid lease of the upland must be maintained by Lessee. Unless Lessee purchases the upland, a lease or sublease allowing Lessee the use of the upland property ("contract") must be in place during the entire term of this authorization (ADL 108586). A current copy of the contract, or any amendments to the contract shall be delivered to DMLW within 14 days of issuance.

## Attachment 3: Entry Authorization

STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINING, LAND & WATER  
Southeast Regional Office, 400 Willoughby, P.O. Box 111020  
Juneau, AK 99811-1020, (907) 465-3400

### ENTRY AUTHORIZATION Under AS 38.05.810(e)

ADL 108566

**Kootznoowoo, Inc.** ("Lessee") is issued this Entry Authorization by **DNR, Division of Mining, Land & Water** ("Lessor") to use a parcel which comprises a total of approximately 1.7 acres of state-owned tide and submerged land located within the Copper River Meridian, Township 49 South, Range 67 East, NE ¼ Section 34.

The parcel can be more particularly described as follows:

Copper River Meridian, Township 49 South, Range 67 East, NE ¼ Section 34, on approximately 1.7 acres of tide and submerged land.

Latitude and Longitude (DD)  
57.583°N, 134.638°W

This Entry Authorization authorizes entry for the required appraisal and / or construction to take place in order to conduct the as-built survey prior to lease issuance. The Development Plan (Attachment 1) depicts the subject area and intended activity.

This Entry Authorization is effective \_\_\_\_ and ends \_\_\_\_\_. This EA is active for the first 3 years of the lease term. Should the approved outstanding requirements for lease issuance (e.g., appraisal, survey) be delivered to Lessor prior to the EA expiration, the lease may be issued.

This Entry Authorization is issued subject to the following:

1. Acceptance of the terms and conditions of the Standard Lease Agreement (Attachment 2) and Special Lease Stipulations (Attachment 3), which will be executed once all of the requirements to lease issuance have been provided;
2. Payment of an annual use fee in the amount of \$1000 as described in the provisions of the Preliminary Decision, which will be due on or before \_\_\_\_\_ ;
3. Proof of insurance as required in the Lease Stipulations, #11 (Attachment 3);
4. Maintenance of a performance guaranty as required in the Lease Stipulations, #10 (Attachment 3);
5. Completion of an acceptable official Alaska Tideland Survey of the prospective leasehold prepared to the DMLW standards. The area shown on the approved Development Plan (Attachment 1) is the basis for the survey area; and
6. Completion of a current Fair Market Value Appraisal once the land is surveyed.
7. An Authorization to Execute Contracts (Attachment 4) or other form of proof that the signer of the Entry Authorization has the authority to execute a lease and related documents on behalf of Juneau Hydropower Inc.

**Entry Authorization Extensions:** An extension of this Entry Authorization that is required because of the Lessee

or its contractor's failure to meet or provide all prerequisites for the issuance of the lease on or before the expiration date will be considered upon receipt of a written request and \$100 filing fee. A prerequisite for such an extension may be the remittance of a deposit equal to the estimated cost of completing the required appraisal and survey. Any portion of said deposit not utilized for the purpose for which it was required will be refunded [AS 38.05.860(a)].

**Termination of Leasehold Interest:** Failure to provide the required deliverables as described above and within the timeframe identified for the Entry Authorization may be considered cause for termination of any leasehold interest.

**Signature of Lessee or Authorized Representative of Lessee hereby accepting and agreeing to comply with the terms and conditions of this Entry Authorization:**

Printed Name	Signature	Title	Date
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**Signature of Authorized DNR Representative:**

Benjamin M. White, SE Regional Manager	Date
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**Advisory Regarding Violations of the Entry Authorization Guidelines:** A person who violates a condition of an authorization is subject to any action available to the Department of Natural Resources (DNR) for enforcement and remedy, including revocation, civil action for forcible entry and detainer, ejectment, trespass, damages, and associated costs, or arrest and prosecution for criminal trespass in the second degree. DNR may seek damages available under civil action, including restoration damages, compensatory damages, and treble damages under AS 09.45.730 or AS 09.45.735, for violations involving injuring or removing trees or shrubs, gathering geotechnical data, or taking mineral resources.

If a person responsible for an unremedied violation or a condition of an authorization applies for a new authorization from DNR under AS 38.05.035, DNR may require the applicant to remedy the violation as a condition of the new authorization, or to begin remediation and provide security to complete the remediation before receiving the new authorization. If a person who applies for a new authorization under AS 38.05.035 has previously been responsible for a violation of a condition of an authorization issued under this chapter, whether remedied or unremedied, that resulted in substantial damage to the environment or to the public, DNR will consider that violation in determining the amount of the security to be furnished and may require the applicant to furnish three times the security that would otherwise be required.

The Regional Manager reserves the right to alter the above conditions before the authorization is issued, in which case Lessee will be so advised. If compliance with these conditions is not achieved, it may be sufficient cause for a monetary penalty for trespass, or the revocation of this authorization immediately and denial of subsequent authorizations. Direct all questions on this authorization to the Division of Mining, Land & Water, Southeast Region, 400 Willoughby Ave., P.O. Box 111020, Juneau, Alaska 99811-1020, telephone (907) 465-3400.



Attachment 1:	Development Plan
Attachment 2:	Standard Lease Agreement
Attachment 3:	Special Lease Stipulations
Attachment 4:	Authorization to Execute Contracts