



**Preliminary Decision**  
**Sealaska Timber Co. LLC**  
**ADL 108680 – Lease**  
**AS 38.05.075(c)**

**I. Requested Authorization**

The Sealaska Timber Co. LLC (Applicant) applied for a lease on February 14, 2013, for a log storage area and log transfer facility in Kina Cove, Prince of Wales Island. A revised application was provided on October 19, 2016. Under the previous name, Sealaska Timber Corporation, the applicant previously held a ten-year lease for a similar purpose, in effect between April 10, 2003, through January 31, 2013.

The lease request is for continued use of an existing log storage area and log transfer facility. A development diagram is included as Attachment 1.

Existing Improvements below the line of MHW (14.8 feet) are:

- 24' x 36' floating dock for seaplane access and 10' x 70' walkway
- 40' x 200' log transfer facility drive down ramp with 25' x 30' attached barge ramp (2606 cubic yards)

Proposed Improvements below the line of MHW (14.8 feet) are

- 11 buoys, 19 anchors, three 510' log-booms, float and walkway to be installed only when logging operations resume in the future

The total area requested by the applicant is 18.83 acres.

**II. Proposed Authorization**

We (DMLW) will issue a 20-year lease to the applicant under AS 38.05.075(c). This lease would authorize the proposed improvements and continued use of the existing improvements to operate a log storage area, log transfer facility, and float with attached walkway for beach access.

**III. Authority**

AS 38.05.035, AS 38.05.070, AS 38.05.075 and Alaska Administrative Code 11 AAC 55 and 11 AAC 58.

**IV. Administrative Record**

Case file ADL 108680 is the administrative record for this case. Also incorporated by reference is the *Princes of Wales Island Area Plan* (POWIAP, October 1998).

**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 regula-

tions; (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**

The parcel is located in Kina Cove, which extends southwest 1.8 miles from Kasaan Bay on the east coast of Prince of Wales Island about 5.5 miles southwest of Kasaan, Alaska.

### **Legal Description**

The proposed lease is located within Section 29 and 32, Township 73 South, Range 85 East, Copper River Meridian and containing approximately 18.83 acres. Coordinate Location: 55° 29' 36" N, 132° 31' 28 W.

### **Other Land Information**

**i. Municipality:** none

**ii. Regional Corporation:** Sealaska

**iii. Village Corporation:** Kasilco Inc.

**iv. Federally Recognized Tribe:** Organized Village of Kasaan

## **VII. Title**

A DNR title report (RPT-97358) issued on June 9, 2017, from DNR's Realty Services reports that the State of Alaska holds title to the subject submerged and tideland estates of the project area under the Equal Footing Doctrine and the Submerged Lands Act of 1953. Title is subject to valid existing rights, including reservations, easements, and exceptions in the U.S. Patent or other State or federal conveyance, and in acts authorizing the issue thereof, easements, rights-of-way, covenants, conditions, reservations, notes on the plat, and restrictions of record, if any.

## **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 *Prince of Wales Island Area Plan* (POWIAP, October 1998) and is located within Management Unit 12c – Kasaan Bay. Eleven areas in this subunit were identified to be managed for support facilities for commercial timber harvest activities.<sup>1</sup> This area is one of them and is identified as "Site 12.10-LT" for the log transfer site and "Site 12.05-LS" for the log storage site.<sup>2</sup>

The designated land use is Forestry - development, Crucial Habitat, and Recreation/anchorage which convert to Settlement Land, Wildlife Habitat Land, and Public Recreation Land as the land classifications.

---

<sup>1</sup> POWIAP Ch. 3, p. 202

<sup>2</sup> June 8, 2017, Technical Correction for the Prince of Wales Island Area Plan

Preliminary Decision ADL 108680

Page 2 of 11

### *Forestry Development (F)*

On tide and submerged lands, this designation provides for all timber harvest support facilities, including log transfer, log storage, or floatcamps. Eleven areas within Subunit 12c area managed for support facilities for upland commercial timber harvest.

### *Crucial Habitat (Ha)*

Crucial habitat are areas that 1) serve as a limited, concentrated use area for fish and wildlife species during a sensitive life history stage where alteration of the habitat and or human disturbance could result in a permanent loss of a population or species' sustained yield, or 2) localized traditional harvest areas of limited size where alteration of habitat could permanently limit sustained yield to traditional users.<sup>3</sup>

### *Recreation/anchorage (Ra)*

Recreation is any activity or structure that is used for recreational purposes, including but not limited to hiking, camping, boating, anchorage, access points to hunting and fishing areas, and sightseeing.<sup>4</sup> The classification is also defined as locations commonly used by recreation or commercial vessels for anchoring.<sup>5</sup>

### *Areawide Land Management Policies*

The areawide land management policies applicable to forestry use state that the area will be managed for multiple use consistent with AS 41.17.060 and the primary Forest designation.<sup>6</sup> Log transfer facilities will be constructed, sited, operated, and monitored to avoid or minimize impact on state land and resources.<sup>7</sup> The design, development, and use of these facilities shall be consistent with the *Log Transfer Facility Siting, Construction, Operation and Monitoring/Reporting Guidelines* (October 1985). DMLW considers the APDES General Permit for Log Transfer Facilities (AKG701000) to be the successor to the 1985 Guidelines and meets or exceeds Guideline C of POWIAP for areas designated "Forestry".

The areawide land management policies applicable to crucial habitat states that when issuing leases or otherwise authorizing the use or development of state lands, DNR, DEC, and 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> In addition, 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>9</sup>

---

<sup>3</sup> POWIAP Appendix A P. 2

<sup>4</sup> POWIAP Appendix A P. 8

<sup>5</sup> POWIAP Ch. 3 P. 4

<sup>6</sup> POWIAP Ch. 2 P. 12

<sup>7</sup> POWIAP Ch. 2, P. 14

<sup>8</sup> POWIAP Ch. 2 P. 5

<sup>9</sup> POWIAP Ch. 2 P. 17

The areawide land management policies applicable to recreation states Alaska's residents and increasing numbers of out-of-state visitors desire and expect a variety of outdoor recreational opportunities with different levels of accessibility. Areas with unmodified natural landscapes, conveniently located public recreation areas; well designed, maintained, and safe recreation facilities; and opportunities to appreciate Alaska's history and diverse cultures should be provided.<sup>10</sup>

#### *Area Plan Compatibility*

The log transfer and storage site is outside of the 300-foot buffer area established at the mouths of anadromous fish streams. An appropriate 'Fish and Wildlife Habitat' area wide land management guideline to consider recommendation in the lease is that floating tideland facilities will not ground at any tidal stage; this should include log rafts.

To protect public use of the adjacent anchorage, the log storage areas must be sited and operated so that the use or capacity of the anchorage within Kina Cove will not be significantly diminished. All temporary structures (buoys, booms, lines or cables) must be removed during periods of inactivity. The lease agreement will include a stipulation that 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.

During the adjudication of this application, the Southeast Region found an area within the POWIAP that was omitted from the plan and required a technical correction. On the map depicting Subunit 12C, purple markers signify Log Transfer Sites (LT) and green markers signify Log Storage Sites (LS). The DNR Resource Assessment and Development Section (RADS) determined that "that portion of Kina Cove located in the SE ¼ of Section 29, Township 73 S, Range 85 E, Copper River Meridian, should have a green marker in the cove showing that this was the planned area for a log storage inadvertently left off the map. Evidence of this omission is located on page 204 of Chapter 3 under Subunit 12c, Kasaan Bay, Forestry Resource Information: 'Sealaska Corporation and Kivilco, Inc own uplands with commercial timber stands in the Subunit. Sealaska's log transfer and storage will be located in Kina Cove (Site 12.05 LS and Site 12.10 LT).' Coincidentally, the LS and LT in the last sentence of this portion of the POWIAP should have read '(Site 12.05 LT and Site 12.10 LS)'."

Issuance of this lease is compatible with the designation, classification and management intent for the land. STC has obtained the required authorization to discharge bark under the APDES General Permit for Log Transfer Facilities (AKG701015).

#### **Mineral Orders**

The proposed leasehold does not fall within the areas delineated in Administrative Mineral Closing Order (MCO) No. 734 and No. 739 (POWIAP, Appendixes B and C). The uplands adjacent to the proposed site are not state-owned and therefore not subject to an MCO. Neither an MCO

---

<sup>10</sup> POWIAP Ch. 2. P 17  
Preliminary Decision ADL 108680  
Page 4 of 11

nor a leasehold location order is necessary to or appropriate for this proposed leasehold.

#### **Local Planning**

The proposed lease site is not within an organized municipality and therefore not subject to any local area plans or ordinances.

#### **Traditional Use Finding**

Pursuant to AS 38.05.830, and after due consideration, we find that the proposed lease is likely to have little or no effect on the density of the population in the immediate vicinity and that 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**

The physical access to the proposed lease site is via tide and submerged lands associated with Kina Cove, Princes of Wales Island, by boat or float plane only.

**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.

Public access along public waters at the log transfer facility may be unsafe during log transfer operations, therefore DMLW will allow temporary closure of the public access easement. DMLW would establish a stipulation for the lease, to state:

"Pursuant to AS 38.05.127(a)(1), 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 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."

### **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 being disposed of. There are currently no storage tanks on tidelands or the applicant-owned uplands as the facility is idle. A fuel tank farm will be re-installed on STC's uplands during periods of operation. Environmental risk associated with this proposed

authorization should be minimal. STC has obtained the required authorization to discharge bark under the APDES General Permit for Log Transfer Facilities (AKG701015).

## **XI. Background**

A lease was issued to the applicant (formerly Sealaska Timber Corporation) from April 10, 2003, through January 31, 2013, for a log transfer facility at this site under ADL 106502. We received their renewal app on February 14, 2013. However, the lease was not eligible for renewal under AS 38.05.070(e) because the application was not received in time. An updated application was provided on October 19, 2016.

### **Related Actions**

No patents, easements, reservations, authorizations or any other actions were identified that would affect the use of the parcel.

### **Unauthorized Uses**

The log transfer ramp and floating dock have remained unauthorized on the leasehold since the previous lease expired on January 31, 2013. An unauthorized use file under ADL 108761 was opened for the site on April 19, 2017. STC has paid unauthorized use fees for the period ending on January 31, 2016. Additional unauthorized use fees will be addressed in the "Compensation" section below. The unauthorized use case will be closed if the lease is issued.

Additionally, satellite imagery and aerial photos taken by DNR of Kina Cove in 2013 show an unauthorized log staging area approximately 3.23 acres in size located outside of the previously authorized lease area (ADL 106502). An unauthorized use file under ADL 108769 was opened on May 4, 2017, for this unauthorized use. When asked why the logs had been placed outside of the authorized area, STC explained that "Rafts are not typically staged for transit outside of authorized storage tracts, but if for some peculiar reason they needed to be, it would typically be only long enough to facilitate organizing a tow of several rafts that the tug boat is capable of towing in transit, given weather conditions, etc."<sup>11</sup> STC has stated that the log staging area is no longer in place, however to resolve this unauthorized use STC will be charged a land use fee for staging logs outside of an unauthorized area. This is addressed in the "Compensation" section below. Once payment is received, unauthorized use case file ADL 108769 will be closed.

## **XII. Application Reviews**

### **Agency Review**

A thirty-day agency review period was conducted on April 20, 2017. The deadline for comments was May 20, 2017.

The following were included in this review:

---

<sup>11</sup> April 27, 2017 Email from Sealaska Timber Company, LLC.  
Preliminary Decision ADL 108680  
Page 6 of 11



- ♦ Alaska Department of Fish & Game (ADFG), Division of Habitat
- ♦ Department of Environmental Conservation (ADEC), Division of Environmental Health
- ♦ ADEC, Wastewater Discharge Authorization
- ♦ DNR, Division of Forestry
- ♦ DNR, Alaska Office of History and Archaeology (OHA)
- ♦ DNR, Alaska State Historic Preservation Office

Alaska Department of Fish and Game (ADFG), Division of Habitat

ADFG submitted comments stating that this site is located in District 2, Statistical Area 102-60. Harvest data from Statistical Area 102-60 shows an annual average of 49,756 pounds of Dungeness crab (total harvest of 1,641,939 pounds from 1982 to 2017) harvested by 49 permit holders. District 2 also has a fall/winter season description. Of the areas with a fall/winter season description, Statistical Area 102-60 is the leading statistical area in terms of commercial Dungeness crab harvest. Over the past four seasons, harvest in Statistical Area 102-60 has averaged 82,026 pounds, comprising 35% of the total harvest for the areas with a fall/harvest season description.

Aerial surveys of the Dungeness crab grounds in central and northern Southeast Alaska are conducted every June soon after the commercial summer fishery opens, however Statistical Area 102-60 is not part of this aerial survey, therefore ADFG was unable to comment on the scope of the commercial Dungeness crab fishery effort seen in the immediate area. However, ADFG added that the proposed project area incorporates, and is near environments that are considered estuarine and are partially comprised of sandy, muddy and mixed substrates, which are considered potential habitat for adult Dungeness crab. ADFG recommended that log storage be limited to the uplands because of the project's potential impacts on the Dungeness crab resource due to habitat degradation through bark deposition, and potential impacts to Dungeness crab fisheries.

**DNR Response**

The site is classified Forest Land and the management intent requires us to manage the unit consistent with Log Transfer Facilities and Sort Yards specified in Management Guideline C of the POWIAP. Management Guideline C requires that the design, development, and use of these facilities shall be consistent with the *Log Transfer Facility Siting, Construction, Operation, and Monitoring/Reporting Guidelines* or successors to these standards. In our assessment, the DEC APDES is considered the successor to the 1985 Guidelines and meets or exceeds Guideline C. DEC is the appropriate State agency for oversight of these discharges into waters of the US. The DEC file number assigned for the site is AKG701015. Because the proposed activity is allowed in the area under the Area Plan and DEC has approved of the discharges, we will allow in-water storage.

**XIII. Discussion**

Log transfer facilities and storage areas are critical for access to remote harvest areas and for transportation of harvested timber to market. This lease would allow for continued access and use of remote land owned by Sealaska Corporation for this purpose and, considering the regional economic benefit, is in the best interest of the state.

Log transfer facilities may go through extended periods of inactivity. During periods of inactivity, all temporary structures must be removed from state land and the site must be left in a clean and safe condition. STC is required to provide an annual report of which LTFs on state land are active and those that are inactive.

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

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

Pursuant to AS 38.05.070(c), we recommend issuance of a 20-year lease to the applicant for the purpose of operating a log-transfer facility. The lease shall be subject to the standard DMLW Lease Agreement (form 102-111, re-vised May 2001), Special Stipulations and the terms and conditions set forth therein (Attachment 2).

##### **Survey**

In accordance with AS 38.04.045, the applicant is 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.

Before any fill is placed on state tidelands, the line of mean high water must be surveyed, consistent with 11 AAC 96.040(d).

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.

##### **Appraisal**

In consultation with the DMLW Appraisals Unit and in accordance with AS 38.05.840(a), it was determined that an appraisal is required. The Applicant must provide a fair market value appraisal of the proposed leasehold prepared by a licensed appraiser approved by the Appraisals Unit. The cost of the appraisal shall be borne by the Applicant.

##### **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) to conduct the required survey and appraisal. The proposed EA is for a term of three years and would be issued after the Final Decision becomes effective. Once the conditions of the EA are met, the lease will be issued. The total lease term is inclusive of the term of the EA.

##### **Compensation**

###### **Annual Land Use Fees**

The annual land use fee shall be the same amount charged under the previous authorization (ADL 106224): **\$3,875** until the required appraisal has been completed and approved. If it is determined that the appraised value is less than \$3,875, then STC will be credited the difference. However, if it is determined from the appraisal that the fair market value for the subject parcel is greater than \$3,875, then the annual land use fee will be adjusted to reflect this



amount from the effective date of the Entry Authorization and STC will be responsible for the payment of any difference from payments made since that date.

#### **Periodic Rate Adjustment**

In accordance with AS 38.05.105, the annual land use fee payment will be subject to adjustment at five-year intervals after the issuance of the lease.

#### **Payment for Land Use without Authorization**

The applicant's improvements have remained on state land since their previous authorization expired in 2013. Fees were paid for land use up to January 31, 2016. The applicant will owe a fee for the use of state-owned land from February 1, 2016 up to the date of issuance of the Entry Authorization in the amount of \$3,875 per year or \$322.92 per month. Payment will be required as a deliverable prior to issuance of the Entry Authorization. Additionally, a land use fee will be required for the unauthorized placement of a 3.23-acre log storage area in Kina Cove in 2013. Pursuant to 11 AAC 05.010(e)(5), the fee for the temporary log storage area will be \$550.

#### **Performance Guaranty**

Performance guaranties provide a means to pay for corrective action if the lease-holder fails to comply with the lease requirements. In accordance with AS 38.05.035(a)(4), STC 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. DMLW has determined that the performance guaranty for the subject lease will be **\$55,400**.

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, STC 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 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.

If the applicant's 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.

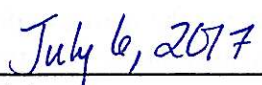
**Workers' Compensation Insurance:** The applicant shall provide and maintain, for all its employees, Workers' Compensation Insurance as required by AS 23.30.045. Where applicable, coverage must comply with any other statutory obligations, whether Federal (i.e., U.S.L.&H., or, Jones Act) or other state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

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 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 108680.

#### **XV. Adjudicator Recommendation**

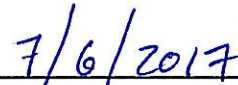
Based on the information provided by the applicant and other agencies, as well as review of planning documents, statutes, and regulations, I recommend approving a lease authorizing the applicant continued use of a log storage area, log transfer facility and float. I recommend proceeding to public notice 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.

  
\_\_\_\_\_  
Christy Gentemann, Natural Resources Specialist

  
\_\_\_\_\_  
Date

#### **Unit Manager Concurrence**

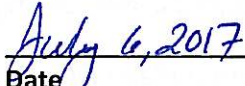
  
\_\_\_\_\_  
Virginia Batts, Natural Resources Manager

  
\_\_\_\_\_  
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.

  
\_\_\_\_\_  
Benjamin M. White, Southeast Regional Manager

  
\_\_\_\_\_  
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 the ADFG; USACE; NMFS; USFS; SEACC; SE Alaska Soil and Water Conservation District; City of Kasaan; Organized Village of Kasaan; Kasilco Inc. We will request that the Kasaan 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 [sero@alaska.gov](mailto:sero@alaska.gov) by the close of business on **August 7, 2017**, in order 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.