



**Preliminary Decision**  
**Sealaska Timber Co. LLC**  
**ADL 108671 – 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 transfer facility (LTF) in Hetta Inlet, Prince of Wales Island, Alaska. This involves the in-water placement of logs, log storage, and a floating dock in support of timber harvest. A development diagram is included as Attachment 1.

Existing improvements below the line of MHW (12.0 feet) are:

- 24' x 36' service float and 150' x 10' walkway
- 40' x 160' log transfer ramp and adjoining barge bulkhead (3546 cubic yards)

Additional proposed improvements below the line of MHW (12.0 feet) are:

- Three log- standing booms with 11 buoys, 17 anchors, and three shoreties

The total area requested by the applicant is 22.4 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 transfer facility.

**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 108671 is the administrative record for this case. Also incorporated by reference is the *Prince of Wales Island Area Plan Amendment* (POWIAPA, May 2008).

**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**

The parcel is located on state tide and submerged land in Hetta Inlet near Sulzer Passage and Beaver Creek about 9 miles east of Hydaburg, Alaska.

### **Legal Description**

The proposed lease is located within Section 10 and 15, Township 76 South, Range 84 East, Copper River Meridian and more particularly located seaward and adjacent to US Survey 691, at 55° 17' 12" N, 132° 37' 48" W. The proposed leasehold contains approximately 22.4 acres more or less.

### **Other Land Information**

- i. Municipality:** none
- ii. Regional Corporation:** Sealaska
- iii. Village Corporation:** Haida Corporation
- iv. Federally Recognized Tribe:** Hydaburg Cooperative Association

## **VII. Title**

A DNR title report (RPT-9757) issued on June 12, 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 *Prince of Wales Island Area Plan Amendment* (POWIAP, May 2008) and is located within Management Unit HT-25/Upper Hetta Inlet and HT-64/Other Region 19 Tidelands. The designated land use is Forestry and General Use which convert to Forest Land and Resource Management and as the land classifications.

This unit must be managed consistent with the requirements for Log Transfer Facilities and Sort Yards specified in Management Guideline C in the Forestry section of Chapter 2 and with all other applicable state and federal requirements.<sup>1</sup> Heritage sites must also be protected. According to the POWIAPA, this small unit is a state leased LTF site under ADL 106503.<sup>2</sup> This LTF is the same location and proposed use

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<sup>1</sup> POWIAPA, p. 2-50

<sup>2</sup> POWIAPA, p. 2-50

as the subject lease application, ADL 108671.

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>3</sup> Log transfer facilities will be constructed, sited, operated, and monitored to avoid or minimize impact on state land and resources.<sup>4</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). The POWIAPA also requires that transfer facilities are consistent with General NPDES Permit No. AK-G70-1000, or successors to this General Permit.<sup>5</sup>

The General Use designation is land that contains one or more resource values, none of which is of sufficiently high value to merit designation as primary use, or, because of the size of the unit, a variety of uses can be accommodated with appropriate siting and design.<sup>6</sup> When applied to tidelands, this would include tidelands, shorelands, and submerged lands not designated in specific units for specific habitat, harvest, economic, or recreation functions.<sup>7</sup> Management of tidelands designated General Use is decided through formal state and federal permitting procedures.

Issuance of this lease is compatible with the designation, classification and management intent for the land. STC has the required Authorization to Discharge (AKG701038) under the Alaska Pollutant Discharge Elimination System (APDES) General Permit for Log Transfer Facilities from the Alaska Department of Environmental Conservation.

#### **Mineral Orders**

The proposed leasehold does not fall within the areas delineated in Administrative Mineral Closing Order (MCO) No. 1080 (POWIAPA, Appendix B). The uplands adjacent to the proposed site are also not subject to an MCO. Neither an MCO nor a leasehold location order is necessary to or appropriate for this proposed leasehold.

#### **Local Planning**

Hetta Inlet is not within an organized municipality and is 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

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<sup>3</sup> POWIAP ch. 2, p. 12

<sup>4</sup> POWIAP ch. 2, p. 14

<sup>5</sup> POWIAPA p. 1-9

<sup>6</sup> POWIAPA ch. 1, p. 3

<sup>7</sup> POWIAPA ch. 1, p. 3

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 by the adjacent uplands owned by the applicant, and through Hetta Inlet, a navigable body of water. When the LTF is in operation, employees and contractors of STC will travel by road from Hydaburg and other island communities.

### **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.

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Public access along public waters at this site 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, however, a fuel tank farm will be reinstalled on the adjacent uplands during periods of operation. Environmental risk associated with this proposed lease of state tide and submerged land should be minimal, as long as bark accumula-

tion on state tide and submerged lands is limited to what is allowable under the Department of Environmental Conservation's APDES General Permit for Log Transfer Facilities. The APDES Permit issued to STC for the Hetta Inlet LTF is AKG701038.

## **XI. Background**

A 17.5-acre log transfer facility was originally permitted to the applicant (formerly Sealaska Timber Corporation) under tideland permit SET 93-014. The permit was issued on March 10, 1993, and expired on March 9, 1998. The applicant needed to continue to use the site and applied for a subsequent 10-year lease of 20.9 acres. A lease was issued to the applicant from April 10, 2003, through January 31, 2013, under ADL 106503. We received a renewal application 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 21, 2016, for a new lease (ADL 108671) of 22.4 acres for a 20-year term.

The adjacent upland area USS 691 is owned by Sealaska Corporation and the tideland permit SET 93-014 referred to the line of mean high water of the survey which resulted in two permit conditions specific to the permit. One condition was "This permit by authorizing placement of fill upon state tideland does by no means whatsoever constitute or acknowledge by the state any change in the recorded meander line of Hetta Inlet established by USS 691." The second condition was that "The Permittee acknowledges by signing this permit their acceptance of the additional burden of proof that their disturbance of the meander line of Hetta Inlet shall place upon them should at some future date they wish to apply for any accretion rights to the tidelands which may occur." It is recommended that these two conditions be carried onto the lease.

### **Related Actions**

The lease is associated with a Land Use Permit issued to Sealaska Timber Company, LLC for a log storage area (LAS 27170) located within Hetta Inlet.

### **Unauthorized Use**

The log transfer ramp has remained unauthorized on the proposed leasehold since the previous lease expired on January 31, 2013. An unauthorized use file under ADL 108762 was opened for the site on April 19, 2017. The applicant 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 ADL 108762 will be closed if the lease is issued.

## **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:

- ♦ Alaska Department of Fish & Game (ADFG), Division of Habitat

- ♦ Department of Environmental Conservation (ADEC), Division of Environmental Health
- ♦ ADEC, Water Division
- ♦ DNR, Division of Forestry
- ♦ DNR, Alaska Office of History and Archaeology (OHA)

#### **Agency Comments**

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

ADFG submitted comments stating that this site is located in District 3, Statistical Area 103-25. Harvest data from Statistical Area 103-25 shows a total harvest of 9,578 pounds of Dungeness crab grounds harvested by five permit holders from 1984 to 2010. 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 103-40 is not part of this aerial survey and ADFG was unable to comment on the scope of the commercial Dungeness crab fishery effort seen in this immediate area. However, 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**

We acknowledge ADFG's concerns. However, the site is classified Forest Land and General Use. 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 of the area plan. Because the proposed activity is allowed in the area under the Area Plan and DEC has approved of the discharges, we will allow this activity at the site. In addition, areas classified General Use allow a variety of uses with appropriate siting and design.

### **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 activity has been authorized in the past at this location<sup>8</sup> and, rather than the same activity at a new location, it is in the best interest of the State to allow for continued use of this already-developed facility.

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

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<sup>8</sup> ADL 106503  
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condition. STC is required to provide an annual report to DNR explaining 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).

##### **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 includes the term of the EA.

##### **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. Survey approval by the DMLW Survey Section is a prerequisite to lease issuance. The area shown on Attachment 1 is the basis for the survey.

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.

##### **Compensation**

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

The annual land use fee shall be the same as the total required under the previous authorization (ADL 106224): \$4,850 until an appraisal is approved by DNR. If it is determined that the appraised value is less, 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 \$4,850, then the annual land use fee will be adjusted to reflect this amount from the effective date of the lease. Additionally, STC will be responsible for the payment of any difference from payments made during the term of the Entry Authorization.

**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 submerged land since their previous authorization expired in 2013. Land use fees were paid for land use up to January 31, 2016. 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 \$4,850 per year or \$404.16 per month. Payment will be required as a deliverable prior to issuance of the Entry Authorization.

**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 **\$64,200**.

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 108671.

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

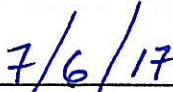
Based on the information provided by the applicant and other agencies, as well as review of planning documents, statutes, and regulations, I recommend approving a lease authorizing the applicant to continue use of a log storage facility. I recommend proceeding to public notice for the purpose of providing 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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Christy Gentemann, Natural Resources Specialist

  
\_\_\_\_\_  
Date

#### **Unit Manager Concurrence**

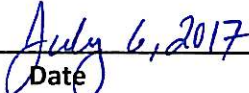
  
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Virginia Batts, Natural Resources Manager

  
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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

  
\_\_\_\_\_  
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; NMFS; USACE; Sealaska; Haida Corporation; Hydaburg Cooperative Association; SEACC; Southeast Soil and Water Conservation District; City of Hydaburg; and USFS. We will request that the Hydaburg 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 [christy.gentemann@alaska.gov](mailto:christy.gentemann@alaska.gov) by the close of business on **August 7<sup>th</sup>, 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.