

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

Southeast Regional Land Office

Lease Renewal Decision

ADL 104373

Southern Southeast Regional Aquaculture Association

Application for Lease Renewal

AS 38.05.070(e)

Requested Action

The Southern Southeast Regional Aquaculture Association (SSRAA) (Lessee) has applied to the Department of Natural Resources (DNR), Division of Mining, Land & Water (DMLW), Southeast Regional Land Office (SERO) to renew their tide and submerged land lease for a 30-year term. This lease (ADL 104373) authorized improvements on state-owned tide and submerged land used in association with the Burnett Inlet Hatchery, located on Etolin Island. The current lease expires on July 14, 2019.

SSRAA has made no changes to development plan. This lease renewal is subject to the Development Plan approved on July 6, 2018 (As Amendment #3 to Lease Agreement, recorded in the Wrangell Recording District as Document No. 2018-000166-0), included as Attachment 1, and the terms and conditions of the existing lease, Attachment 2.

Regional Manager's Decision

DMLW will renew this lease under the authority of AS 38.05.070(e). This lease will be renewed for the same term as that of the original lease, 30-years, for the purpose of authorizing continued operations at the Burnett Inlet Hatchery. Because the leasehold boundaries were modified in the latest amendment, a new Alaska Tidelands Survey (ATS) will be required. The survey must be conducted in accordance with Survey Instructions issued by the DMLW Surveys Section. The survey must be obtained, submitted to DMLW, and approved within the first five years of the renewed lease.

Authority

AS 38.05.070(e), AS 38.05.810(b-d)

Administrative Record

Case file ADL 104373 is the administrative record for this case. Also incorporated by reference is the *Central/Southern Southeast Area Plan* (CSSEAP, November 2000).

Scope of the Decision

The scope of administrative review for this authorization [AS 38.05.070(e)] 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.

Description

Geographic Location

The parcel is located on state-owned tide and submerged lands within Burnett Inlet, Etolin Island, Alaska, at approximately 56.1131° N, 132.4692° W (WGS84).

Legal Description

A parcel of tide and submerged land within protracted Section 30, Township 66 South, Range 84 East Copper River Meridian, containing approximately 4.30 acres of land, more or less, and inclusive of a portion of Alaska Tideland Survey (ATS) 1337.

Other Land Information

Municipality: City & Borough of Wrangell

Regional Corporation: Sealaska Corporation

Village Corporation: Wrangell Cooperative Association

Federally Recognized Tribe: Central Council of the Tlingit and Haida Indian Tribes of Alaska (CCTHITA)

Title

The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying Burnett Inlet in the section(s) referenced above, on the basis of the Equal Footing Doctrine, the Submerged Lands Act of 1953 and AS 38.04.062 (Identification of State Submerged Lands).

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.

Adjacent Landowners

The adjacent uplands are owned by the U.S. Forest Service (USFS). SSRAA currently operates on the adjacent uplands under USFS Special Use Permit 4957-01. The USFS will be notified of this decision.

Third Party Interests

None identified.

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 *Central/Southern Southeast Area Plan* (CSSEAP, November 2000) and is located within Management Unit WT-49/WTS-23.01. The designated land use is

“Crucial Habitat” (Ha) and “Harvest” (Hv) which converts to “Wildlife Habitat Land” (WHB) as the land classification.

Land classified wildlife habitat is land which is primarily valuable for: 1) fish and wildlife resource production, whether existing or through habitat manipulation, to supply sufficient numbers or a diversity of species to support commercial, recreational, or traditional uses on an optimum sustained yield basis; or 2) a unique or rare assemblage of a single or multiple species of regional, state, or national significance.

The land use designation “habitat” applies to areas of varied size for fish and wildlife species during a sensitive life-history stage where alteration of the habitat or human disturbance could result in a permanent loss of a population or sustained yield of a species. This land will remain in state ownership except for areas where a tidelands conveyance to a municipality is allowed under AS 38.05. 825. This designation applies to uplands, tidelands, and submerged lands.

Units designated “harvest” are subsistence, recreational and/or community harvest areas of varied size where alteration of habitat could permanently limit sustained yield to traditional users; or areas of intense harvest where the level of harvest has or is projected to reach the harvestable surplus for the resource. This land will remain in state ownership except for areas eligible for a tideland conveyance to a municipality under AS 38.05.825. This designation applies to uplands, tidelands and submerged lands.

The management intent for the Burnett Inlet area, WT-49, is to “protect fish and wildlife habitat and commercial fishing harvest values.” Additionally, the Burnett Inlet Hatchery is specifically designated by the plan as a small tract tideland unit (WTS-23.01), with its own management considerations. The plan states that this small tract of tideland is to be managed for the private hatchery.

Issuance of this renewal is compatible with the designation, classification and management intent for the subject land. The salmon rearing operations that take place at the Burnett Inlet hatchery contribute to the advancement and protection of the commercial fishery in this area.

Mineral Orders

Neither the leasehold area, nor the adjacent uplands, are subject to an existing mineral closing order issued by DMLW. A mineral closing order is not deemed necessary or appropriate for this leasehold.

Local Planning

The proposed use is within the City and Borough of Wrangell local planning and zoning ordinances may apply. The Borough will be notified of this Preliminary Decision.

Traditional Use Finding

This finding is not required since the proposed leasehold is located within an organized borough (AS 38.05.830).

Access

Physical and Legal Access

The physical and legal access to the proposed lease site is via tide and submerged lands association with Burnett Inlet, a navigable body of water, by boat or float plane.

Access To and Along Public Waters:

Pursuant to the Alaska Constitution and 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. The existing lease is subject to a public access easement along the shoreline of Burnett Inlet extending 50' seaward. The renewed lease will also be subject to this public access easement.

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.

Hazardous materials, as detailed below, will be stored on the proposed leasehold. Stipulations are included in the existing lease, and will be included in the subsequent lease, to ensure proper handling and storage.

- Unleaded gas, #1 and #2 diesel fuel, up to twenty 55-gallon drums totaling 1,100 gallons;
- Fixed #1 diesel fuel oil tank with containment basin, 175 gallons;
- Formalin (35% formaldehyde solution), ten 55-gallon drums totaling 550 gallons.

Background

DMLW first received an application for lease of the subject area from the Alaska Aquaculture Foundation Inc. in July 1986. The subject land was surveyed and appraised by Alaska Aquaculture Foundation Inc., and a lease was issued on July 15th, 1989. The leasehold was then assigned to SSRAA on October 22nd, 1997 following the bankruptcy of Alaska Aquaculture Foundation.

In May 2002, the lease was amended to include various improvements that had either been completed by Alaska Aquaculture Foundation or proposed by SSRAA. These improvements included an airplane float, a VR complex, an array of three net pens, a bunkhouse and associated deck, a fish rearing building with associated concrete slab and associated aluminum raceways, an aluminum fish ladder, and an aluminum gangway.

The lease was amended a second time in May 2015 to include further improvements on state-owned tide and submerged land. The proposed improvements included a 9,500 ft² dock and a new 50'x70' incubation building of metal construction, all of which would be supported by 57 driven steel piles. As depicted on the attached development diagrams, the finished dock con-

struction totaled approximately 5,500 ft² and only 34 steel piles were driven; the incubation facility was constructed as planned.

The lease was amended a third time on July 6, 2018. This amendment added seven net pens, three driven galvanized steel pilings used to moor the new net pens, and a 150-foot HDPE breakwater anchored with two 3,500-lb. anchors. To accommodate these improvements, SSRAA relinquished the northernmost portion of the leasehold (ATS 1337) and expanded the leasehold area to the south and southwest.

The renewal application subject to this decision was received on June 12, 2018.

Application Reviews

Agency Review

An Agency Review was conducted from July 20, 2018 to August 20, 2018. The following organizations were included in this review: Alaska Department of Fish and Game (ADF&G), Alaska Department of Environmental Conservation (DEC), and Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation, Office of History and Archaeology.

Agency Review Comment and Response

No comments were received.

Discussion

AS 38.05.070(e) states, in part, “The director may renew a lease issued under this section, AS 38.05.075, or 38.05.810 if the lease is in good standing and the lease renewal is determined to be in the best interests of the state. A renewal issued under this subsection is not subject to AS 38.05.035(e). A lease may be renewed only once for a term not longer than the initial term of the lease.”

In order to qualify for a renewal, a lease must be in “good standing”. To be considered in good standing, the lessee’s accounts must be current, there are no outstanding compliance issues, and that the lessee maintains a healthy business relationship with the lessor. SSRAA’s most recent amendments to the leasehold were authorized in the summer of 2018. SSRAA has also made all required payments to date and is considered to be in good standing with DNR.

SSRAA is a private, non-profit regional aquaculture association organized under AS 16.10.380 and 5 AAC 40 and is exempt from paying federal income tax. Regional aquaculture associations are established to advance commercial salmon fisheries, thereby advancing local economies. The applicant has been operating since 1976, operating seven hatcheries and eight remote release sites throughout central and southern Southeast Alaska.

Continued operations at the Burnett Inlet Hatchery are vital to SSRAA’s role in enhancing salmon fisheries. In consideration of the lessee’s good standing and the economic and cultural

importance of sustained, viable salmon fisheries in Southeast Alaska, DMLW finds that renewal of this lease for a subsequent 30-year term is in the best interest of the state.

Recommendation and Preliminary Decision

Authorization Type and Term

As provided by AS 38.05.070(e), DMLW has determined that it is appropriate to renew lease ADL 104373 SSRAA for a consecutive 30-year term. The subsequent lease shall be subject to the standard DMLW Lease Agreement (form 102-111, re-revised May 2001), Special Stipulations and the terms and conditions set forth therein (Attachment 2).

Compensation and Appraisal

Annual Land Use Fee

A Reappraisal Market Check received by the DMLW Appraisal Unit concluded that available data clearly indicates that annual rent, which is based on fair market value, is unlikely to increase. Therefore, the annual compensation (rent) shall remain at the current amount, which is \$2,050.00.

Periodic Rate Adjustment

In accordance with AS 38.05.105, the annual rent will be subject to adjustment at five-year intervals after the issuance of the lease renewal.

Performance Guaranty

Performance guaranties provide a means to pay for corrective action if the lease-holder fails to comply with the lease requirements. The amount of the performance guaranty is based on the scope and the nature of the activity and the potential cost of restoring the leasehold.

SSRAA holds a Blanket Performance Guaranty and Security Agreement with the DMLW backed by a Time Certificate of Deposit. This performance guaranty and security agreement was set up to cover all of SSRAA's authorizations with the DMLW. Performance guaranty obligations may be added when new authorizations are issued, and deleted as authorizations are properly restored and closed out. The bonding amount attributed to the Burnett Inlet Hatchery is currently \$173,000.00. It is recommended that this amount continue to be included in the Blanket Performance Guaranty and Security Agreement.

This amount is 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.

Survey

Within the first five years of the renewed lease term, SSRAA will be required to remit a new Alaska Tidelands Survey (ATS) that depicts the amended lease boundaries and all improvements as built. Attachment 1 is the basis of the survey. The survey must be com-

pleted in accordance with Survey Instructions issued by the Survey Section. A Request for Survey Instructions form and the applicable Survey Instructions fee must be submitted to DMLW before a renewed lease will be granted. If SSRAA fails to provide an approved survey within the first five years of the lease term, DMLW may seize a portion of the Performance Guaranty, in the amount necessary to complete the survey.

ATS 1337 is subject to a 50' public access easement seaward of the line of mean high water. Pursuant to 11 AAC 51.045 and AS 38.05.127, the new survey will also be subject to this public access easement.

Insurance

SSRAA has a blanket certificate of insurance which states "Any and all State of Alaska land use authorizations (including but not limited to lease, permit, or easement) granted to named insured with the State of Alaska. Certificate holder is named as additional insured where required by written contract." It is recommended that this blanket certificate of insurance be used for this authorization.

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 DMLW 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 104373.

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 renewal of lease ADL 104373 in accordance with the requirements described herein.



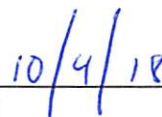
Tyler Riberio, Natural Resource Specialist II



Date

Unit Manager Concurrence

Virginia Batts, Natural Resource Manager



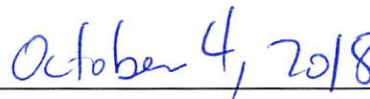
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Regional Manager Decision

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 renewal of this lease is in the best interest of the State.



Lee V. Cole, Jr., Southeast Regional Manager



Date

ATTACHMENTS:

Attachment 1. Development Plan

Attachment 2. Standard Lease Agreement and Additional Stipulations

PUBLIC NOTICE AND APPEAL PROCESS:

In accordance with AS 38.05.070(e), this decision will be noticed on the Alaska Online Public Notice website and to known interested parties for a period of 30 days.

A person affected by this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of issuance of this decision, as defined in 11 AAC 02.040(c) and (d), and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to (907) 269-8918; or sent by email to dnr.appeals@alaska.gov.

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