STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
Southeast Regional Land Office

Preliminary Decision
ADL 108930
Alaska Remote Lodges, LLC.
Application for Lease
AS 38.05.075(c)

Executive Summary
This Preliminary Decision (PD) is the State's preliminary best interest finding for a 10-year lease authorizing the use of 0.35 acres of State-owned land for the moorage and use of an existing commercial-use floating dock (4,402 sq. ft.) secured with one anchor and one shoretie. The public is invited to comment on this PD. The deadline for commenting is **5:00 pm May 22, 2019**. Please see the Public Notice section of this decision for requirements related to submitting comments for consideration.

Requested Action
Alaska Remote Lodges, LLC. (applicant) applied for a 10-year lease on June 30, 2018, requesting year-round moorage of a commercial-use dock within Tongass Narrows adjacent to northwest Pennock Island, Ketchikan Gateway Borough.

The lease request is for continued use of an existing floating dock for overnight moorage and access used in association with a nightly rental property operated by the applicant on the adjacent uplands. A development diagram is included as Attachment 1.

Existing Improvements:
- Floating wood dock, 389' x 10', 3,890 sq. ft.
- Floating wood dock, 16' x 32', 512 sq. ft.

The total area requested by the applicant is approximately 1.24 acres. Final acreage will be determined by an approved as-built diagram of the leasehold.

Proposed Action
The Division of Mining, Land & Water (DMLW) proposes to issue a 10-year lease to the applicant authorizing the use of 0.35 acres of state-owned land for the moorage and use of an existing commercial-use floating dock (4,402 sq. ft.) secured with one anchor and one shoretie.

Scope of Decision
The scope of this decision limited to the determination of whether it is in the State's best interest to issue a 10-year preference right lease to the applicant. The administrative review for this authorization is defined by AS 38.05.035(e)(1)–(2) and 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) any issues that are material to the determination.

Authority
This lease application is being adjudicated per AS 38.05.035(b)(1) and AS 38.05.035(e) Powers and Duties of the Director, AS 38.05.070 Generally, AS 38.05.075 Leasing Procedures, and AS 38.05.945 Notice. The authority to execute the PD, Final Finding and Decision (FFD), Entry Authorization (EA), and the lease has been delegated to the Regional Managers of the DMLW.

Administrative Record
The administrative record for the proposed action consists of the Constitution of the State of Alaska, the Alaska Land Act as amended, applicable statutes and regulations referenced herein, the Central/Southern Southeast Area Plan, and other classification references described herein, and the casefile for the application serialized by DNR as ADL 108930.

Location Information

Geographic Location
The requested site is located in Tongass Narrows, a navigable body of water, adjacent to northwest Pennock Island, approximately 0.75 miles southwest of Ketchikan, Alaska; USGS Quad Ketchikan B-5 SW.

Property Description
The proposed lease is located within Section 25, Township 75 South, Range 90 East, Copper River Meridian and more particularly located seaward and adjacent to lot 2 of U.S. Survey No. 1847, Plat 88-24, filed August 29th, 1988, Ketchikan Recording District.

Other Land Information
Municipality: Ketchikan Gateway Borough
Recional Corporation: Sealaska Corporation
Village Corporation: None
Federally Recognized Tribe: Ketchikan Indian Corporation, Central Council Tlingit and Haida Tribes of Alaska
Approximate Lat/Long: 55.3338° N, 131.6586° W NAD83

Title
The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying Tongass Narrows in the section 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.

Landowners
The following parcels are adjacent to the proposed lease area. All adjacent landowners will be notified of this preliminary decision.
Lots 1 and 3 of U.S. Survey No. 1847, Plat 88-24 are owned by the applicant.
USS 1402, Lot 3 of USS 2989, and ATS 328 are owned by Carol J Egner.
USS 2189 and USS 2506 are owned by Sonja R Westergard and April Whitton.
Tracts B-1 and B-2 of USS 2601, and Lots 1 and 2 of USS 1552 are owned by Anita and Kenneth Duckett.

Third Party Interests
None identified.

Associated Case File

ADL 108849: Unauthorized Use case to document the unauthorized moorage of this commercial-use floating dock on state-owned tide and submerged lands.

Planning and Classification
The proposed site is subject to the Central Southern Southeast Area Plan (CSSEAP) and is located within Region 5 - Ketchikan, unit KT-66 - Pennock Island. The designated land use is Shoreline Use (Sd) which converts to Settlement Land as the land 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." Many units have a primary designated use which may take precedence over other uses. Generally, however, DNR allows for multiple uses (CSSEAP, p. 3-2).

Designation: Shoreline Use (Sd) – "This designation applies to areas of state tidelands or submerged lands, generally within 100 feet of the shoreline, where water-related or water-dependent facilities for personal use by the owner of an adjacent upland site may be authorized. Facilities may include small docks, boat ramps, mooring buoys, or other facilities for personal, non-commercial use. Development of facilities for commercial or industrial use will be determined on a site-specific basis. An authorized shoreline facility is considered the private property of the owner who built or maintains it, but this private property right does not extend to the surrounding tidelands, submerged lands, or waters (CSSEAP, p. 3-5)."

Classification: Settlement Land – "Tideland, submerged land, or shoreland classified settlement is land that is suitable for floathomes, or land that is immediately adjacent to upland areas with existing or proposed settlement and that will be managed to support those existing or proposed upland settlement uses (11 AAC 55.202)."

The uplands of Pennock Island are classified as a residential zoning district and cottage industry by the Ketchikan Gateway Borough. The management intent of the tideland unit KT-66 is to develop the shoreline to support the upland residential development (CSSEAP, p. 3-319). Further, the designation of unit KT-66 allows for commercial-use water-dependent facilities for use by the owner of an adjacent upland site on a site-specific basis (CSSEAP, p. 2-45, p. 3-5). The commercial-use occurs seasonally during the summer months, and the dock is used for personal use by the applicant the remainder of the year.

The dock is a water-dependent facility that will provide vessel moorage and access to development located on the adjacent upland parcel for use by the owner and clients. Any impact to adjacent habitat is expected to be negligible. The proposed activity is consistent with the Shoreline Use designation and Settlement Land classification acknowledged in the area plan.

Traditional Use Finding
This finding is not required since the proposed leasehold is located within an organized borough (AS 38.05.830). The Borough will be notified of this Preliminary Decision.

Access
The physical access to the proposed site is via tide and submerged lands associated with Tongass Narrows, a navigable body of water.

Access Along Navigable and Public Waters
The site is located within Tongass Narrows. Per 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, the DMLW is required to reserve specific public-access easements to and along these waters. Unless comments and other information submitted to the 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 Trust Doctrine
Per AS 38.05.126, the proposed lease will be subject to the principles of the Public Trust Doctrine; specifically, the right of the public to use navigable waterways and the land beneath them for: navigation, commerce, fishing, hunting, protection of areas for ecological studies, and other purposes. These rights must be protected to the maximum extent practicable while allowing for the development of this project. As such, the DMLW is reserving the right to grant other authorizations to the subject area consistent with the Public Trust Doctrine.

Reservation of Mineral Estate
In accordance with section 6(i) of the Alaska Statehood Act and AS 38.05.125, the state, in this decision, reserves unto itself the mineral estate, including oil and gas, and the rights expressed in the reservation clause of the statute, that being the right to reasonable access to the surface for purposes of exploring for, developing and producing the reserved mineral resources. Exploration and development, if any, which could occur, would be consistent with AS 38.05.130 and other applicable statutes and regulations.

Mineral Orders
The proposed leasehold does not fall within the areas delineated in Administrative Mineral Closing Order (MCO) No. 747 (CSSEAP, Appendix B). Neither an MCO nor a leasehold location order is necessary or appropriate for this proposed lease.

Hazardous Materials and Potential Contaminants
No fuels or hazardous substances will be stored at this site. Environmental impacts are expected to be minimal.

Agency Review
An agency review was conducted from February 4, 2019 through March 6, 2019.
The following agencies were included in the review: Alaska Department of Fish and Game (ADF&G), Alaska Department of Environmental Conservation, Alaska Department of Transportation & Public Facilities (DOTPF), and Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation, Office of History and Archaeology. One comment was received from ADF&G, summarized and responded to as follows:

> **Agency Comments**
> ADF&G, Division of Wildlife Conservation: ADF&G has reviewed the tideland lease application and has no objection to the issuance of a lease.
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> **DNR Response**
> DNR Response: None required.

Background
The applicant purchased upland lots 1, 2, and 3 of U.S. Survey 1847 in 2008. The purchase included a dock composed of a series of wood segments anchored in the location of the current requested improvements. The dock was presumed to have been built by a previous owner in the 1970s. At the time of the purchase, the DMLW considered the dock a "Generally Allowed Use" under 11 AAC 96.020. However, in 2011 the applicant obtained a business license for accommodation and food services under the name "Alaska Remote Lodges, LLC" and clients began using the dock to access the upland rental property on lot 3. This operation constitutes commercial use and requires that applicant receive written authorization from the DMLW. In 2012 the wood dock segments were replaced with one 389' x 10' rigid segment with one 16' x 32' dock attached at the seaward end.

The dock extends 405 feet seaward from the uplands. The seaward end of the dock is adjacent to 1.83 acres of privately-owned tidelands included in Alaska Tideland Survey 328. The applicant states that the dock swings approximately 6 feet during tidal changes.

> Unauthorized Use: The site has been used commercially without authorization since 2011. On January 26, 2018, unauthorized use case ADL 108849 was opened and a letter detailing the unauthorized use was sent to the applicant. This letter instructed the applicant to submit a lease application, or remove the dock from state land. The Compensation section below addresses incurred use fees for the unauthorized activity. The unauthorized file will be closed should the lease be issued.

Discussion
The proposed activity is consistent with the Shoreline Use designation and Settlement Land classification for this area as acknowledged in the Central Southern Southeast Area Plan. The dock is a water-dependent facility that will provide vessel moorage and access to development located on the adjacent upland parcel for use by the owner and clients.

The proposed dock will provide an economic benefit to the state through the collection of annual use fees. Ina addition, the dock has been in place for access to Lot 2 since the 1970s, and any impact to adjacent habitat from continued moorage is expected to be negligible.

As the owner of the adjacent upland Lots 1, 2, and 3 of U.S. Survey 1847, the applicant is eligible for a preference right for a non-competitive lease of the proposed 0.35 acres of state-owned tide and submerged land under AS 38.05.075(c). Considering this and the consistency with the area plan, the DMLW finds that it is in the best interest of the state to authorize this ongoing land use in accordance with AS 38.05.075(c).

Development Plan
The development plan attached to this decision (Attachment A) and dated July 6, 2018, is under consideration by the DMLW. Should the proposed lease be granted, it is anticipated that the development plan will need to be updated throughout the life of the lease as activities and/or infrastructure are added or subtracted. All updates must be approved, in writing, by the DMLW before any construction, deconstruction, replacement of infrastructure, or change in activity will be authorized. The DMLW reserves the right to require additional agency review and/or public notice for changes that are deemed by the DMLW to be beyond the scope of this decision.

Performance Guaranty
In accordance with AS 38.05.035, AS 38.05.860, and 11 AAC 96.060(a) Performance Guaranty, the applicant will be required to submit performance guaranties for the lease to incentivize performance and to provide a mechanism for the state to ensure that the lessee shares in financial burden in the event of noncompliance for site cleanup, restoration and any associated costs after termination or expiration of the leases, the following bonds will be required.

> **Bond Type**
> $5,500 Performance Bond: Performance guaranties provide a means to pay for corrective action if the lessee fails to comply with the lease requirements. In accordance with AS 38.05.035(a)(4), the applicant will be required to submit a performance guaranty. 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. 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 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 30-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.
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> Workers' Compensation Insurance: Workers' Compensation Insurance shall not be required because the applicant does not employ any workers at the leased premises.

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 108930.

Survey
In accordance with AS 38.04.045, this lease does not require a survey. The State of Alaska reserves the right to require one in the future, should the need arise due to changes in statutes or increased use of the area. The applicant will be required to submit a scaled diagram with GPS coordinate points for all leasehold corners. Remittance of an approved diagram will be required before the lease may be issued.

Compensation and Appraisal
A Minimum Rent Determination for the proposed leasehold was completed on March 21, 2019. In accordance with AS 38.05.840(b), the applicant will not be required to provide an appraisal before lease issuance, and the proposed lease annual fee will be $1,000. Furthermore, in accordance with AS 38.05.105, the proposed lease will be subject to reappraisal at five-year intervals after the issuance of the proposed authorization.

The applicant used state-owned tide and submerged land to moor a commercial-use dock prior to securing authorization. If it is decided that a lease will be issued, the annual land use fee will be charged for the duration of unauthorized activity and payment of these fees will be due as a deliverable for lease issuance. The applicant will be required to pay $6,000 in back fees for the use of state land from 2013 through 2019.

Subleases
Subleasing may be permissible through AS 38.05.095, if the proposed lease is approved. All potential subleases must first be approved in writing by the DMLW. The DMLW may conduct further agency review and/or public notice before making a determination on the appropriateness of the proposed sublease. The sublease fee will not be less than 25% of the annual fee paid to the lessee by the sublessee.

Assignment
The proposed lease, if issued, may be assigned to another individual or corporation only with written approval from the State of Alaska. A lease will not be assigned to an entity if that entity does not meet the statutory requirements of the lease, or if the lessee is considered not to be in "good standing" with this or any other agency authorization.

Reclamation
In accordance with AS 38.05.090, the leasehold must be restored to a "good and marketable condition" as determined by the DMLW within 120 days after termination of the lease.

Public Notice
Pursuant to AS 38.05.945, this PD will be advertised for a 30-day public comment period, starting on April 22, 2019. In addition, the post office located near the proposed leasehold will be requested to post the notice pursuant to AS 38.05.945(b)(3)(C). The notice will also be posted on the State of Alaska Online Public Notice website pursuant to AS 38.05.945(b)(3)(B) located at: https://aws.state.ak.us/OnlinePublicNotices/Default.aspx. In accordance with AS 38.05.946, a municipality or a corporation entitled to receive notice under AS 38.05.945(c) may hold a hearing within 30 days after the receipt of the notice.

The public is invited to comment on this PD. All comments received during the public comment period will be considered in the FFD. If public comments result in significant changes to the PD, additional public notice may be given. A copy of the FFD, along with instructions on filing an appeal, will be sent to all persons who comment on the PD. To be eligible to appeal, a person affected by the FFD must provide written comments during the public comment period per AS 38.05.035(i).

Written comments about this project must be received in this office no later than
5:00 PM on May 22, 2019 to be considered.

To submit comments please choose one of the following methods:

Mail: Department of Natural Resources
Division of Mining, Land and Water
Southeast Regional Land Office
ATTN: John King
P.O. Box 111020
Juneau, AK 99811-1020
Email: john.king@alaska.gov
Fax: (907) 465-3886

Questions about the lease portion of this project can be directed to John King at (907) 465-3511.

Signature page follows

Recommendation
The DMLW has completed a review of the information provided by the applicant, examined the relevant land management documents, agency comments, land ownership, and has found that this project is consistent with all applicable statutes and regulations. The DMLW considered both direct and indirect benefits to the State. As there are no competing projects which are incompatible with the proposed lease and in consideration of the benefits described above, DNR finds granting of the proposed lease provide the greatest benefit to the State.

I find the proposed action may be in the State's best interest and recommend approval to proceed with public notice.

4/22/19

John D King, Natural Resource Specialist II — Date

Preliminary Decision
It is the determination of the Division of Mining, Land and Water that it may be in the State's best interest to issue a tideland lease for 10 years to the applicant, as described above. Additionally, the issuance of this lease authorizes an existing dock that provides vessel moorage and access to development located on the adjacent upland parcel for use by the owner and clients. This application shall now proceed to public notice.

April 22, 2019

Lee V. Cole, Jr., Regional Manager — Date
Southeast Regional Office, Division of Mining, Land and Water

ATTACHMENTS:

Attachment 1. Development Plan
Attachment 2. Standard Lease Agreement and Special Stipulations