

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE BIG GAME COMMERCIAL SERVICES BOARD**

In the Matter of)
)
LARRY HOOTON) OAH No. 15-1068-GUI
)
_____)

ORDER ON SUMMARY ADJUDICATION

I. Introduction

Larry Hooton provides guiding services to hunt big game.¹ The Division of Corporations, Business, and Professional Licensing (Division) denied Larry Hooton’s Guide Use Area (GUA) Registration Application because he did not have the requisite permission to guide from the landowner. Mr. Hooton appealed.² The parties agreed that no material facts are in dispute. Mr. Hooton’s pre-hearing brief was considered a motion for summary adjudication.

II. Facts

Mr. Hooton lives on 20 acres in GUA 01-04, bordering Berners Bay, a body of water north of Juneau.³ GUA 01-04 contains state, federal, and City and Bureau of Juneau (CBJ) land.⁴ On February 3, 2015, Mr. Hooton applied for approval to guide hunts in GUA 01-03 and GUA 01-04.⁵ Mr. Hooton’s application indicated that he had permission from the landowner to provide game hunting services on the land.⁶

On February 5, 2015, the Division issued Mr. Hooton a guide use area registration confirmation.⁷ On March 9, 2015, the United States Forest Service (USFS) notified Mr. Hooton that his request for permission to guide hunts on GUA 01-03 and GUA 01-04 was denied.⁸ Mr. Hooton’s request for reconsideration was denied.⁹ The USFS stated that there is competitive interest in the guided big game hunting in GUA 01-03 and GUA 01-04.¹⁰ USFS policy dictates that where there is a competitive interest, the USFS must issue a prospectus to solicit proposals.¹¹

¹ R. 42, Registered Guide-Outfitter, State license # 844.

² R.6.

³ Hooton, status conference, Nov. 9, 2015.

⁴ *Id.*

⁵ R. 26 – 34. See: http://dnr.alaska.gov/mlw/gcp/gua/pdfs/gua_selmil.pdf

⁶ R. 27.

⁷ R. 25. The confirmation was issued by the staff of the Big Game Commercial Services Board.

⁸ R. 38.

⁹ R. 21.

¹⁰ R. 21.

¹¹ R. 21; R. 23.

USFS stated it does not have the staffing capacity to work on a prospectus for these areas.¹² The USFS also does not have any current plans to issue a prospectus for GUA 01-03 and GUA 01-04, but will advertise the opportunity if it becomes available.¹³

Based on USFS's denial, the Division revoked Mr. Hooton's guide use area registration on March 26, 2015.¹⁴

III. Discussion

A. Nature of Summary Adjudication

Summary adjudication is permitted under 2 AAC 64.250 in an administrative proceeding, and, like summary judgment in a court proceeding, it permits the decision maker to issue a decision without an evidentiary hearing when facts are not in dispute.¹⁵ In evaluating whether a party is entitled to summary adjudication, all facts are to be viewed, and inferences drawn, in the light most favorable to the party against whom adjudication may be granted.¹⁶ If facts that would affect the decision are in dispute, summary judgment will be denied, and a hearing held to determine the facts.

B. The Division correctly denied Mr. Hooton's guide use area registration application.

Alaska statute prohibits big game hunting guides from entering or remaining on private, state, or federal land for guiding purposes without prior authorization.¹⁷ To register for a GUA, a big game hunting guide must submit documentation that he or she has authorization from the landowner to hunt on at least 5,000 contiguous acres in the GUA.¹⁸ The USFS did not grant Mr. Hooton permission to access either GUA 01-03 or GUA 01-04. Therefore, the Division was required by law to deny his application to guide in those areas.

Mr. Hooton opposes the Division's denial on several bases. First and foremost, Mr. Hooton is concerned that the USFS has taken control over guided hunts, both with regards to access and the number, length and type of hunt.¹⁹ It appears USFS has not issued guided hunt

¹² R. 21.

¹³ R. 21; R. 23.

¹⁴ R. 35 – 37.

¹⁵ *Alaska Public Offices Comm'n v Gillam*, OAH No. 11-0328-APO at 1-2 (Oct. 19, 2011 APOC).

¹⁶ *Id.* at 2 (citing *Samaniego v. City of Kodiak*, 2 P.3d 78, 82-83 (Alaska 2000)).

¹⁷ AS 08.54.720(a)(4).

¹⁸ 12 AAC 75.230(a)(4).

¹⁹ Hooton's Case Planning Conference Information, treated as a motion for summary adjudication (Sept. 23, 2015).

permits in either GUA and has no plans to do so in the near future.²⁰ Mr. Hooton believes that the Division as well as the Department of Fish and Game should take action against the USFS's refusal to grant access to this and other Southeast Alaska guide areas.

Mr. Hooton also argues that the Alaska National Interest Lands Conservation Act (ANILCA) allows hunting guides temporary access, despite USFS's denial. ANILCA allows the Secretary of Agriculture to authorize temporary access for purposes of survey, geophysical, exploratory, and other temporary uses, whenever the Secretary determines that the access will not result in permanent harm to the resources.²¹ However, Mr. Hooton does not have permission from either the USFS or the Secretary to access the federal lands in GUA 01-03 and GUA 01-04. Without landowner permission, the Division is required to deny Mr. Hooton's application.

Lastly, Mr. Hooton stated that CBJ does not require permission to hunt on its lands. Mr. Hooton asserts that the Division may approve his application based on this. This is not the case. The law requires documented permission from the landowner.²² Mr. Hooton did not provide any documentation from CBJ.²³ It will not suffice that CBJ itself does not require permission.²⁴ In order for the Division to approve Mr. Hooton's application, CBJ would have to provide documentation granting permission for him to access its land for guided hunts. This issue was discussed at the November 9, 2015, status conference, and Mr. Hooton planned to work with CBJ to acquire documented permission.

On December 18, 2015, this office received a paper copy of an email between Mr. Hooton and Dan Bleindorn, CBJ's Deputy Lands Manager. Mr. Hooton described the email as CBJ's confirmation that Mr. Hooton has permission to access CBJ lands to guide hunts. The email copy is incomplete and cut off. While the email may indicate permission, it is not clear from the submission. Mr. Hooton may forward the information from CBJ to the Division for consideration if Mr. Hooton applies for a 2016 guide permit.²⁵ The Division was correct to deny Mr. Hooton's application based on the record at the time of its decision.

²⁰ Hooton, case planning conference (Nov. 9, 2015).

²¹ 16 U.S.C. §3171. Secretary means Secretary of Agriculture regarding Forest Service Lands; otherwise Secretary means Secretary of the Interior, 16 U.S.C. § 3102(12). The land here is part of the Tongass National Forest. USFS is under the Department of Agriculture, R.21.

²² 12 AAC 75.230(a)(4) requires documentation from the landowner or land manager.

²³ Mr. Hooton was told over the phone by CBJ staff that CBJ does not require permission to hunt on its lands.

²⁴ Mr. Hooton explained that between state and city land, the acreage would meet the 5,000 acre requirement.

²⁵ Mr. Hooton's permission to guide in GUA 01-03 and GUA 01-04 would have expired December 31, 2015. See R. 25.

IV. Conclusion

Whether the Division, Department of Fish and Game, or other state agency should work with (or against) USFS to increase guide access is beyond the scope of this hearing. The sole issue is whether the Division appropriately denied Mr. Hooton’s guide use area registration application to guide hunts in GUA 01-03 and GUA 01-04. Because state law prohibits issuance of a big game guide permit without permission from the landowner, the Division correctly denied Mr. Hooton’s GUA registration application.

DATED: December 21, 2015.

Signed

Bride Seifert
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 08.54.600. The undersigned, in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 15th day of March, 2016.

By: Signed

Signature
Kelly Vrem

Name
Chair B.G.C.S.B.

Title

[This document has been modified to conform to the technical standards for publication.]