

**ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND & WATER**

**Preliminary Decision
Lease
ADL 107196**

**Dove Island Lodge, Sitka Sportfishing Charters, LLC
AS 38.05.035(e)**

State Tidelands Lease

This Preliminary Decision is the initial determination on a proposed disposal of interest in State land and is subject to comments received during the Public Notice period. The public is invited to comment on this Preliminary Decision. The deadline for commenting is 5:00 PM February 12, 2016. Please refer to the Public Notice, Final Decision and Appeal Rights section on page 14 of this decision for details on how and where to send comments for consideration.

I. Requested Authorization

On April 2, 2009, we received a request from Dove Island Lodge, Sitka Sportfishing Charters, LLC., owned by Harold (Duane) Lambeth and Tracie Lambeth for a 25-year lease of approximately 0.71 acres of State owned tide and submerged lands. These State lands are adjacent to Lot 1 Dove Island Resubdivision in Jamestown Bay within the City and Borough of Sitka.

This is an after the fact application for continued use of State tide and submerged lands for the use, operation, and maintenance of the site for moorage and access to the lodge by charter fishing boats and aircraft.

The improvements located on State land consist of:

- A floatplane dock 48.8 feet long and 20.4 feet wide – 996 Sq ft.
- A floating dock 20.3 feet long and 10.3 feet wide, another floating dock 20.4 feet long and 10.5 feet wide – 423 Sq ft .
- A float facility 40.4 feet long and 30.1 feet wide with a building 16 feet wide by 30 feet long, used for outside fuel storage, inside storage and seafood

preparation 1,216 - Sq ft.

- Four 4000 lb concrete anchors hold the above floating structures in place by chains
- An access ramp, 40.5 feet long and 5.5 feet wide – 223 Sq ft non-floating. Electrical lines are attached to the ramp and dock (can be removed by cutting).
- A floating dock for the access ramp connection 11 feet long and 9.9 feet wide – 109 Sq ft.
- A support building, 18 feet long and 16 feet wide, on wood piers with round concrete footings in bedrock (can be removed by sledgehammer), straddles the MHW contour (9.1'), constructed over the shoreline and partially seaward of Mean High Water, directly adjacent to the access ramp – 288 Sq ft non-floating
- A floating dock, with four pilings, 54.8 feet long and 10.4 feet wide – 570 Sq ft.
- A floating finger dock 15.85 feet long and 4.25 feet wide – 67 Sq ft.

For a total of:

- | | |
|---------------------------|--------------------|
| • Floating structures | 3,381 square feet |
| • Non-floating structures | 511 square feet |
| • Anchors | 4 concrete anchors |
| • Piling | 4 piling |

II. Proposed Authorization

We are proposing issuance of a twenty-five year non-competitive lease under AS 38.05.075(c) to Dove Island Lodge, for the above referenced use of State owned tide and submerged lands. We would issue a three-year Entry Authorization (EA) for appraisal and survey of the site prior to lease issuance.

III. Authority

Alaska Statutes 38.05.035(e), AS 38.05.070, AS 38.05.075(c), AS 38.05.945, and Alaska Administrative Code 11 AAC 55, 11 AAC 58, and 11 AAC 62.690-700.

IV. Administrative Record

Case file ADL 107196 is the administrative record for this case. Also incorporated by reference is the Northern Southeast Area Plan, approved October 2002.

V. Scope of the Decision

The scope of administrative review, under AS 38.05.035(e)(1)-(2), for this proposed lease is limited to (1) reasonably foreseeable, significant effects of the uses proposed to be authorized, (2) applicable statutes and regulations, (3) the facts pertaining to the land or resources, and (4) to issues that are material to the determination that the proposed lease will best serve the interests of the State.

VI. Description

A. Location

About two miles southeast of Sitka, Alaska.

B. Geographical Description

The parcel is adjacent to Dove Island in Jamestown Bay, USGS Quad Map Sitka A-4. The property is only accessible by boat or plane.

Municipalities: City and Borough of Sitka

Regional Native Corporation: Sealaska Corporation

Village Native Corporation: Shee Atika, Inc.

Tribal Contact: Sitka Tribe of Alaska

C. Legal Description

A parcel of State owned tidelands and submerged lands within the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 6, Township 56 South, Range 64 East, Copper River Meridian beginning at the mean high water (MHW) boundary of the applicant's leased upland property, described as Lot 1, Dove Island Resubdivision (Plat 2009-24) and comprising approximately 0.7 acres.

The proposed lease parcel is located within Jamestown Bay, which is a navigable body of water.

D. Title

The State of Alaska holds fee title to the submerged and tidelands estates under The Tide and Submerged Lands Act of 1953. Management is subject to the public trust doctrine.

1. Title Restrictions

The 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.

2. Third Party Interests

None. The lodge is connected to the City and Borough of Sitka grid for the electrical power supply. While this powerline runs adjacent to the proposed lease; the applicant, on January 6, 2018 amended his development plan to exclude the power line.

The City and Borough of Sitka Electric Department does not have authorization for this use of State owned tide and submerged land for the power line but is in the process of submitting an application for an easement for the use. Survey instructions for the proposed lease site will avoid the power line by at least 10 feet.

E. Access

1. **Physical and Legal Access** The physical access to the proposed lease is via tide and submerged lands associated with Jamestown Bay. Legal access to the proposed lease site will be provided by a public access easement extending fifty (50) feet seaward of the mean high water line adjacent to the upland parcel.
2. **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. Under AS 38.05.127, we are required to reserve specific public access easements to and along these waters.

Unless comments and other information that we receive provide justifiable and convincing evidence to do otherwise, this disposal of State interest will be subject to a platted 50-foot public access easement seaward of the line of mean high water.

F. Planning and Classification

The State land in the vicinity of the proposed lease is subject to the Northern Southeast Area Plan (NSEAP), adopted October 2002. The site is located within the Southern Region, Baranof Island Area, Sitka Management Area, within the Sitka Sound Tidelands Resource Management Zone (SSTRMZ). The lease area does not occupy any Habitat, Herring Spawning, or Undeveloped Recreation areas indicated on the map of the SSTRMZ. The area is designated 'Resource Management – High Value (Habitat and Public Recreation)'. This designation converts to the classification of 'Resource Management Lands'.

The NSEAP states that the management intent for the SSTRMZ area is twofold:

- “To protect the sensitive fisheries, marine mammal concentration areas, shorebird and waterfowl concentration areas, anadromous streams and areas of estuarine wetlands, as well as brown bear and deer winter concentration within intertidal areas.
- To preserve and protect the customary, traditional, recreational and personal use resources and public access to these resources.”

The Plan also directs that authorizations located in the SSTRMZ do not conflict with the traditional, recreational, personal use activities, or public access uses of areas where these activities occur.

The Alaska Department of Fish and Game had no concerns with this project when they reviewed it in 2009 (see ACMP Review information section).

We believe that the proposed lease is compatible with the planning, classification, and management intent of this area. However, we will consider public comments during this Public Notice period regarding possible adverse impacts of the proposed use or activity upon customary, traditional, recreational, and personal use resources.

1. **Mineral Orders** There are no mineral closure (MO) or leasehold location orders (LLO) for the subject parcel
2. **Local Planning** The proposed lease is within the City and Borough of Sitka and is subject to local planning and zoning ordinances and they will be provided notice of this proposed lease. Local planning issues raised during the comment period will be addressed in the final finding and decision. A revised preliminary decision will be released for additional public notice if issues lead to significant changes to the proposed lease.

Dove Island Lodge, Sitka Sportfishing Charters, LLC. has a Department of the Army permit, POA-2004-1537, issued September 9, 2009, for the dock and floating structures. They also have Conditional Use Permits, approved on March 30, 2010 by the City and Borough of Sitka for the lodge and tideland structures.

3. **Traditional Use Finding** This finding is not required since the proposed leasehold is located within an organized borough. (AS 38.05.830)

VII. Background

On March 11, 2004 we contacted the owners of Dove Island Lodge, Sitka Sportfishing Charters, LLC (organized in 2003), Harold Duane Lambeth with his wife Tracie Lambeth. We noted that they were conducting a commercial business on State tidelands adjacent to Lot 2, Dove Island Subdivision, a subdivision of Tract B of USS 3480 (Plat No. 91-09, Sitka Recording District) without an authorization from DNR.

In October of 2004, we received an application and filing fee on behalf of Harold Duane Lambeth through his agent, Gary Bowen, for a commercial lodge and charter fishing business adjacent to Lot 2, Dove Island Subdivision. The application requested a non-competitive lease under AS 38.05.075(c) which allows the owner or lessee of land that fronts on shoreland, tideland, or submerged land of the state to apply for a preference right to a lease without competitive bidding.

However since Lot 2 was not owned or leased by the applicant at the time of application, they did not qualify for the lease as applied for under the preference right. In addition, the upland owner of Lot 2 objected to the lease. On August 2, 2006, we notified the applicant that his dock facility was in trespass on State lands, changed the case type of his application from tidelands lease to 'trespass', and allowed him to enter into an 'Agreement to Resolve Trespass' which he signed on October 6, 2006.

Subsequently, in 2009, Harold Duane Lambeth and his wife Tracie Lambeth acquired ownership of both lots 1 and 2 of Dove Island Subdivision (Plat 91-09).

The Lambeths, after becoming owners of both lots, removed the common property lines between Lots 1 and 2 of Dove Island Subdivision (Plat No. 91-09) and unsubdivided the island back into one parcel, Lot 1, Dove Island Resubdivision (Plat 2009-24). The proposed lease of State tidelands is now described as adjacent to Lot 1, Dove Island Resubdivision (Plat 2009-24).

On January 1, 2009 Dove Island Lodge, Sitka Sportfishing Charters, LLC. leased the upland property, Lot 1, Dove Island Resubdivision (Plat 2009-24), from the owners, Harold Duane Lambeth and Tracie Lambeth.

As a result of acquiring the uplands lease, Dove Island Lodge, Sitka Sportfishing Charters, LLC., became qualified to seek a preference right to a negotiated lease and on April 3, 2009, submitted an amended application to that effect. That application, including the Development Plan, Attachment A, is the object of this Preliminary Decision.

VIII. Recommendation and Preliminary Decision

A. Authorization Type and Term

Pursuant to AS 38.05.075(c), we are considering the issuance of a 25-year noncompetitive lease to the applicant for continued use of State tide and submerged lands for the use, operation, and maintenance of the site for moorage and access to the lodge by charter fishing boats and aircraft.

The lease shall be subject to the standard DMLW Lease Agreement (form 102-111, revised May 2001) and Special Stipulations and the terms and conditions set forth therein.

1. **Survey** The applicant will be 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 A is the basis for the survey.
2. **Appraisal** We consulted with the Chief Appraiser regarding the need for a fair market value appraisal, and it was determined that an appraisal is necessary. The applicant must provide a fair market value appraisal of the lease site prepared by an appraiser approved by our Appraisal Unit. The appraisal will be subject to our approval. The cost of the appraisal shall be borne by the Lessee.
3. **Annual Report** Lessee shall submit a written annual report due on or before May 1 of each year, to the Lessor documenting information the division determines to be necessary to obtain a clear and detailed understanding of the financial status of commercial operations occurring on, or being facilitated by the lease. At a minimum, the report shall include the following information:
 - a. A certified statement by a certified public accountant stating the gross amount of annual business revenue reported to the Internal Revenue Service for the business or businesses which derive income from the facilities utilizing the lease parcel;
 - b. The number of paying guests served on the lease site, by month during the previous calendar year; the retail sales price and number of days of each trip/visit sold. The total number of non-paying guests served at the site for promotional purposes during the year. The maximum number of guests and staff on site at any time. Copies of all current brochures and promotional materials used by Lessee shall be attached each year to the annual report;

- c. Any other information the division determines to be necessary to obtain a clear and detailed understanding of the commercial operations occurring on, or being facilitated by the lease parcel. Information gathered during the first four years of each five-year period of the lease may be averaged and used to determine the annual rental at the next rent-adjustment period required under AS 38.05.105.

Lessee shall immediately make all necessary financial records available and shall fully cooperate with an independent audit by state auditors to verify any particular annual report submitted, if in his or her discretion, the Lessor determines that verification is necessary. At the discretion of the Lessor, the annual reporting requirement may be temporarily suspended or reinstated in writing as appropriate.

4. **Entry Authorization** To allow for the continued use of the prospective leasehold and the existing improvements while survey and appraisal requirements are being met, DMLW proposes to issue an Entry Authorization (EA) after the Final Finding and Decision becomes the final administrative decision. The term of the EA will be 3 years. The EA will be subject to all of the terms and conditions of the proposed lease (see Attachment B). The term of the lease is inclusive of the 3 year term of the EA.

B. Performance Guaranty

Performance Guaranties assure performance and provide a means to pay for corrective action if the Lessee fails to comply with the requirements set forth in the lease document. 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. Utilizing Director's Policy File DPF 94-01 and the bonding matrix incorporated therein, we have determined that the performance guaranty for the subject lease will be \$16,000.

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.

C. Insurance

Per Condition #24 of the lease document, Lessee 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 the Lessee and the Lessor (the State, its officers, agents and employees).

1. **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 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, for termination of the lease.

2. 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 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 107196.

D. Compensation

Pursuant to AS 38.05.075(f), the annual lease compensation will be based on the approved, appraised market value of the land determined under AS 38.05.840.

1. Annual Compensation The annual fee shall be the minimum lease fee of \$1,000.00 as established in 11 AAC 58.410(b) until an appraisal to determine fair market value has been completed. Once the appraisal has been completed and fair market value rent for the subject parcel has been determined, if the amount is less than \$1,000 per annum the annual fee shall remain at \$1,000.00 in accordance with 11 AAC 58.410(b);

However, if it is determined from the appraisal that the fair market value rent for the subject parcel is greater than the minimum amount, then the rental adjustment will be made to reflect this amount from the effective date of the lease and the applicant will be responsible for the payment of any difference

The first year's annual rental of \$1,000 will be due for a time frame that commenced January 1, 2016.

2. **Back Rent, Previous Occupancy Fees** As noted previously, commercial use of the dock facility began in 2003. Dove Island Lodge has paid fees up through December 31, 2015 and no back rent is due.

E. 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 exist or is known to exist on the land being disposed of. No hazardous material or contamination from hazardous material is known to exist on the land proposed for lease. Environmental risk associated with this proposed conveyance should be minimal.

The dock provides moorage for vessels used as part of operation of the upland lodge which under ordinary conditions may release small amounts of petroleum products into the water. The project includes a 275-gallon aviation fuel tank located the floating facility for topping off the lodge's floatplane as well as five jerry jugs of skiff fuel and two-cycle oil.

The Department of Environmental Conservation (DEC) told us on September 30, 2008 who said that DEC does not require a permit for that amount of fuel. The applicants engineer also reported, on June 5, 2009, that he had spoken with us, DEC, and the Environmental Protection Agency and it was confirmed that a spill contingency plan for this amount of fuel was not required. He further stated that the charter boats and lodge skiffs are fueled at the fuel dock in Sitka. He wrote that the fuel tank (double walled creating a secondary containment) and the dispensing hose are locked in the shed when not in use. Fire extinguishers and absorbent pads are available while topping-off the aircraft.

There will be a lease special stipulation noting that Lessee is responsible for preventing spillage and contamination of contiguous land and water as well as cleaning up any oil or other pollutants that result from activities associated with this lease. Appropriate spill response equipment must be on hand to respond to spills from any transfer or handling of fuel or other hazardous substances.

IX. Application Reviews

A. Agency and Public

Alaska Coastal Management Program (ACMP) Review of the Proposed Project (AK 0904-03J)

A fifty day ACMP review period was conducted on April 10, 2009. The deadline for comments was May 11, 2009. Included in the ACMP Review were the Habitat Division, Department of Fish and Game (ADF&G); ADF&G, Wildlife Conservation (Access Defense); Department of Environmental Conservation; DNR, DPOR, Office of History and Archaeology; DNR, DMLW, Water Resources Section; Corps of Engineers; Central Council of the Tlingit and Haida Indian Tribes of Alaska; City of Sitka; Southeast Alaska Conservation Council (SEACC); DNR, SE Soil and Conservation District; Environmental Protection Agency; NOAA; and the Applicant.

ACMP Comments

The following ACMP comments were received:

- The Sitka Coastal Management Coordinator submitted a request for additional information (RFAI) on April 30, 2009. The Sitka Coastal Management Coordinator submitted no further comments on the project.

DNR Response

The Division of Coastal and Ocean Management supplied the applicant's RFAI response to the Sitka Coastal Management Coordinator on June 9, 2009. No additional concerns were received.

- We commented on June 19, 2009 that the proposed project complied with and was consistent with the ACMP.

DNR Response

None required.

- ADFG, Habitat Division, wrote on June 16, 2009 that they had reviewed the project for consistency with the Coastal Access and Habitat Standards of the Alaska Coastal Management Program. Their comments included:

“Water flow and natural drainage will not be adversely affected by this project. Herring may spawn in this area in any given year. However, the project is already in place so competition with the herring and the herring fisheries is not significant.”

“Therefore, based on the Coastal Access and Habitats Standard, we agree with the applicant’s certification that the project is consistent with the Alaska Coastal Management Program.”

DNR Response

None required.

- On June 29, 2009, the Division of Coastal and Ocean Management, in its Final Consistency Determination, wrote that:

“Based on an evaluation of your project by Departments of Environmental Conservation, Fish and Game, Natural Resources, and the Sitka Coastal District, I concur with the consistency certification you submitted and signed.”

DNR Response

None required.

Agency Review of the Proposed Project

A thirty day agency review period was conducted on April 16, 2009. The deadline for comments was May 18, 2009. The following were included in the Agency Review: Habitat Division, Department of Fish and Game (ADF&G); DNR, DPOR, Office of History and Archaeology; Department of Environmental Conservation; DNR, ACMP; and the City of Sitka.

Agency Review Comments

No Agency Review comments were received.

Public Comments

No public comments were received.

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, under the provisions of AS 38.05.075(c), authorizing the applicant to maintain the existing access and boat moorage facilities. This being the case, 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.



Ted Deats, Natural Resources Specialist



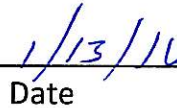
Date

Regional Manager Decision

The file has been reviewed and found to be complete. Based on all of the information provided herein, the Division of Mining, Land and Water has determined that the issuance of a 25 year non-competitive lease to Dove Island Lodge, Sitka Sportfishing Charters, LLC. under AS 38.05.075(c) is in the State's Best Interest and is hereby approved to proceed to public notice.



Robert H. Edwardson, Southeast Regional Manager



Date

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 City and Borough of Sitka, to Sealaska, Inc., to Shee Atika, Inc., and to the Sitka Tribe of Alaska. In addition, the Sitka Post Office and public library will be requested to post the notice and it will be available on the Internet as the Alaska Public Notice System website, which can be accessed at www.state.ak.us (Click on "Notices" at the top of the page).

The public is invited to comment on this preliminary decision. Comments must be received in writing by the DNR Division of Mining, Land and 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 by the close of business on February 12, 2016 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.

ATTACHMENTS: Development Plan, Attachment A
 Standard Lease and Lease Special Stipulations, Attachment B