

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

**PRELIMINARY DECISION**

**ADL 108094 Trevor Sande  
dba Marble Seafoods, LLC**

Application for Lease Amendment  
AS 38.05.035(e) & AS 38.05.083

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 April 27, 2017**. Please see the Comments Section on page 9 of this decision for details on how and where to send comments for consideration. Only the applicant and those who comment have the right to appeal the Final Finding and Decision.

**Requested Action:**

The Department of Natural Resources (DNR), Division of Mining, Land, & Water (DMLW), Southcentral Regional Office (SCRO), has received a request from Trevor Sande dba Marble Seafoods, LLC. to amend aquatic farm lease ADL 108094. SCRO is considering the issuance of an amendment to ADL 108094 for the remaining years of the lease.

A lease agreement for aquatic farming purposes was issued under file no. ADL 108094 to Trevor Sande dba Marble Seafoods, LLC, 355 Carlanna Lake Road, Suite 200, Ketchikan, AK 99901, on November 1, 2011, with an expiration date of October 31, 2021. The legal description for this lease is:

Township 73 South, Range 90 East, Copper River Meridian, and more specifically described as:

Section 20: NE ¼, within a passage between Betton Island and Hump Island northeast of Ketchikan, encompassing an area measuring 300 feet by 1500 feet for oyster grow-out, plus an area measuring 30 feet by 266 feet for hardening and cleaning oysters, more or less.

**Scope of Review:**

The scope of this decision is to determine if it is the State's best interest to issue an amendment for this aquatic farm lease and amend the Central/Southern Southeast Area Plan with the Land Classification Order.

The lease amendment entails combining Parcel 1 oyster grow-out (10.3 acres) and Parcel 2 intertidal hardening beach (0.2 acre) discussed in the 2011 authorized lease into one parcel, Parcel 1. This parcel will also have an increase in the grow-out acreage with an additional 4.5 subtidal acres for a total of 15.0 acres. The proposed new Parcel 2 will be located adjacent to the home of Trevor and Julie Sande. The parcel includes an Alaska District Corps of Engineers authorized residential dock which will be considered a commercial dock with the DNR amendment authorization, and used for FLUPSY and related aquatic farm operations. Parcel 2 will also be used for float storage. Parcel 2 is a subtidal area consisting of 0.4 acres. The combined proposed lease acreage is 15.4 acres.

The detailed description regarding the amendment of the Central/Southern Southeast Area Plan with the Land Classification Order is found in the following pages.

**Authority:**

This lease application is being adjudicated pursuant to AS 38.05.035(b)(1) Delegation of the Powers and Duties of the Director; AS 38.05.035(e) Written Findings; AS 38.05.945 Public Notice; and AS 38.04.065 Land Use Planning and Classification and 11 AAC 55.030(f).

The authority to execute the Final Finding and Decision and the lease amendment has been delegated to the Regional Manager of DMLW.

The authority to execute the Area Plan Amendment has been retained by the Commissioner of the Department of Natural Resources.

**Administrative Record:**

Case file ADL 108094 constitutes the administrative record for Trevor Sande dba Marble Seafoods, LLC.

**Legal Description, Location, and Geographical Features:**

The state land where the proposed amended lease sites are located are described as follows:

**Site nickname:** Clover Passage

- **Legal description Parcel 1:** Sections 20 and 29, Township 73 South, Range 90 East, Copper River Meridian
- **Legal description Parcel 2:** Section 5, Township 74 South, Range 90 East, Copper River Meridian
- **Geographical locations:** Clover Passage, Betton Island, Revillagigedo Island
- **Approximate Lat/Longs:**

**Parcel 1**

**Suspended grow-out and hardening beach area**  
**(437 feet x 1500 feet = 15.0 acres)**

|           |       |                              |
|-----------|-------|------------------------------|
| NE Corner | No. 1 | 55° 31.270' N, 131°45.939' W |
| SE Corner | No. 2 | 55° 31.027' N, 131°46.006' W |
| SW Corner | No. 3 | 55° 31.029' N, 131°46.084' W |
| W Corner  | No. 4 | 55° 31.246' N, 131°46.117' W |
| NW Corner | No. 5 | 55° 31.278' N, 131°46.037' W |

**Parcel 2**

**Floating Upweller System (FLUPSY) nursery and float storage area (120 feet x 150 feet = 0.04 acre)**

|           |       |                                 |
|-----------|-------|---------------------------------|
| NE Corner | No. 1 | 55° 28.9848' N, 131° 46.4662' W |
| SE Corner | No. 2 | 55° 28.9673' N, 131° 46.4521' W |
| SW Corner | No. 3 | 55° 28.9556' N, 131° 46.4893' W |
| NW Corner | No. 4 | 55° 28.9726' N, 131° 46.5043' W |

The parcels are located in the Ketchikan Recording District.

- **Existing surveys:** No surveys have been completed.
- **Municipality/Borough:** Ketchikan Gateway Borough
- **Native Corporations/Federally Recognized Tribes:** Sealaska Corporation, Ketchikan Indian Corporation, Central Council of the Tlingit and Haida Indian Tribes of Alaska, Cape Fox Corporation

**Title:**

A DNR Title Report issued from DNR's Realty Services states that the State of Alaska holds title to the subject tidelands and mineral estate under the Equal Footing Doctrine and the Tide and Submerged Lands Act of 1953 and Patent 50-82-0034. It is subject to valid existing rights, including reservations, easements,

and exceptions. The Title Report #8662 dated July 20, 2016 advised that aside from the usual reservations for valid existing rights, there are no other reservations within the proposed amended lease site. Uplands are primarily owned by the U.S. Forest Service (Tongass National Forest) for lands adjacent to Parcel 1 near Betton Island and by private entities for lands adjacent to Parcel 2 near Revillagigedo Island.

**Third Party Interests:**

No third party interests are known at this time.

**Classification and Planning:**

The project area is subject to the Central/Southern Southeast Area Plan (Area Plan), Region 5, Ketchikan – North, Unit KT-17 (Parcel 1) and Unit KT-58 (Parcel 2).

Current Plan: Management Unit KT-17. Managed Resources/Intent: Within the area designated Ha and Ru, protect the habitat resources which include Pacific herring spawning areas (spring seasonally). The area designated Ha and Ru is to be managed to be consistent with the recommendation for establishment of a marine state park on the adjacent upland parcel. The tidelands within the area designated Ha and Ru are recommended for inclusion in the state marine park, and are to be managed consistent with the eventual development of this use. Floating facilities, except those intended to support recreation uses, are prohibited. The remainder of the area designated Ru is to be managed to insure protection of the vista from Revillagigedo Island. The current plan would not allow for aquatic farming on the east side of Betton Island.

Amended Plan: Along with this proposed lease amendment, a plan amendment is proposed related to Parcel 1 (see Attachment B, Central/Southern Southeast Area Plan Amendment). The proposed amendment to Management Unit KT-17 divides Management Unit KT-17 into two Management Units: KT-17 (to the south of the tideland boundary) and KT-17a (to the north of the tideland boundary). KT-17 would retain its designation and management intent. KT-17a is proposed to be designated as General Use which converts to the classification of Resource Management Land and allows for a variety of activities including aquatic farming. The DNR Division of Parks and Recreation, Park Superintendent for the area, Michael Eberhardt, confirms that there are no plans to develop a state marine park to the north of the tideland boundary, where proposed Management Unit KT-17a lies. This land does not have habitat values as in KT-17 which abuts the Betton Island State Marine Park. It does provide for a myriad of uses which can be accommodated with appropriate considerations. Tidelands in proposed Management Unit KT-17a are recognized to contain important fisheries for subsistence, recreational, and/or commercial harvest. Pacific herring spawning areas (spring seasonally) will be protected. This is an ideal location for limited authorization of aquatic farming. Floating facilities intended to support recreation uses and floating facilities associated with aquatic farming or related hatchery operations may be authorized for Unit K-17a. For complete detail of the proposed amended plan, see Attachment B for the Central/Southern Southeast Area Plan Amendment that will accompany this Preliminary Decision during the 30-day Agency Review and Public Notice period on March 29, 2017.

**Traditional Use Findings:**

Traditional use findings will not be discussed in this Preliminary Decision because the proposed lease site is located within the Ketchikan Gateway Borough, an organized borough.

**Access:**

Access to the aquatic farm is by boat or floatplane. All support facilities are to be located on their privately owned uplands.

**Access To and Along Navigable and Public Waters:**

Nearly all shore and tide lands in the State of Alaska are subject to a To and Along Easement under AS 38.05.127 and 11 AAC 51.045. The purpose of this easement is to uphold the constitutional right of the public to have free access to, and use of, the state's waterways. The department has determined that the issuance of this aquatic farm lease amendment will not block reasonable access to state navigable water. The along easement extends 50 feet seaward from the line of mean high water (MHW).

### **Public Trust Doctrine:**

Pursuant to AS 38.05.126 all authorizations for this site will be subject to the principals 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, SCRO is reserving the right to grant other authorizations to the subject area consistent with the Public Trust Doctrine.

### **Management Analysis:**

The scope of this review is to evaluate and determine if a lease authorization for the above mentioned parcels is in the best interest of the state and supports the overall intent of the Aquatic Farm Act.

In 1988 the legislature adopted statutes referred to collectively as the Aquatic Farm Act. The legislature, through the adoption of the Aquatic Farm Act, established in statute the state could proceed and indeed encourage development in the area of shellfish farming. The two central tenets of the state's aquatic farming policy are:

1. The state should encourage the establishment and responsible growth of an aquatic farming industry; and,
2. Development and siting of aquatic farming operations should be made with full consideration of established and ongoing activities.

With these considerations, Aquatic Farm Leases were designed to achieve commercial production and develop a foundation for an aquatic farming industry in the State of Alaska.

### **Management Goals for Aquatic Farms:**

The overall intent of the Aquatic Farm Program is to provide citizens access to public lands and resources with the goal of creating an industry which will foster the state's economic growth through the creation of employment opportunities and development of Alaska grown shellfish products.

Three main state agencies, the Alaska Department of Fish and Game (ADF&G), DNR, and the Department of Environmental Conservation (DEC) oversee the regulatory responsibilities for the commercial operation of Alaska aquatic farms. These agencies work cooperatively to ensure the state's public lands and resources are being used in such a manner as to positively contribute and benefit the residents of the State of Alaska through means such as economic growth and the availability of locally grown products.

As part of the lease conditions the applicant/lessee is required to submit two documents which the agencies will use to measure the aquatic farm's viability and determine if it is the state's best use of the land and resources. Evaluative measures are derived from a variety of sources including, but not limited to, current industry standards, comparable farms in the area, and research and technology based trends on both the local and regional scale.

The first document an applicant/lessee is required to submit is a Development and Operations Plan describing a basic business strategy for the aquatic farm site. This includes general information such as, location information and infrastructure (i.e. work rafts, covered processing facilities, flupsys, etc.) to be used on the farm site. It also contains measurable goals established by the applicant/lessee, to include information on startup and projected stocking, species to be cultured, anticipated seeding schedules and production and harvest levels for each 12 month cycle. In addition, it specifies business practices such as methods used to improve the productivity of the species being raised (i.e. predator exclusion controls, seeding schedules, etc.), cultivation and harvesting techniques, equipment used for cultivation and harvesting, number of people on site, projected number of days the site is actively being farmed, and methods of accessing the farm site. As the business market is a fluid entity DNR is under the expectation this Development and Operation Plan will be modified (with prior department approval) over the life of a lease.

Annual reports are the second required document a lessee must submit for an aquatic farm site to remain in compliance with lease terms. These reports are used as an evaluative tool by DNR, ADF&G, and the

lessee to measure the productivity of an aquatic farm site, the current feasibility of the Development and Operation Plan, and to identify any problems (i.e. seed shortage, environmental factors, etc.) that have been encountered over the course of a 12 month period. In addition to identifying any difficulties an individual farm may be encountering, these annual reports will provide the regulatory agencies a method of identifying larger scale or industry wide problems and trends.

### **Lease Management Discussion**

Trevor Sande dba Marble Seafoods, LLC was issued a 10-year aquatic farm lease on November 1, 2011. The lease expires on October 31, 2021. An amendment application was received by ADF&G and DNR on April 1, 2016 with revisions on February 24, 2017.

This amendment to the above-referenced lease agreement authorized under ADL 108094 is for the following purposes:

- Combine Parcel 1's suspended grow-out area with Parcel 2's hardening beach area for a modified Parcel 1.
- Expand the footprint of Parcel 1's suspended grow-out area from 10.3 acres to 14.8 acres. The hardening beach area remains the same at 0.2 acre. Parcel 1's combined total for the grow-out area and hardening area will be 15.0 acres.
- Add a new Parcel 2 that will hold a Floating Upweller System (FLUPSY) as a nursery for Pacific oysters and a float storage area. The FLUPSY would be moored to an existing dock on Revillagigedo Island less than 3 miles from the suspended growing area. The FLUPSY and float storage area will encompass an additional 0.4 acre.
- The total acreage for Parcel 1 and Parcel 2 is 15.4.
- Add Sugar Kelp, Ribbon Kelp, Three Ribbed Kelp, and Bull Kelp.
- Amend Central/Southern Southeast Area Plan (Area Plan), Region 5, Ketchikan – North to allow aquatic farming in management unit KT-17a.

The proposed Parcel 1 is specifically located in a narrow channel between Betton Island and Hump Island. This proposed site is approximately 10 nautical miles from Ketchikan located on State-owned tidelands. Parcel 1 includes both a subtidal raft and tray grow-out area and the intertidal hardening beach area. This parcel consists of 15.0 acres with the width varying between 270 feet at the south and 350 feet at the north and the length at 1,500 feet with a depth profile at mean low low water of approximately -20 feet to -80+ feet, except at the north end where the hardening beach is located. Grow-out floats will be positioned in waters -25 feet and greater. The site will accommodate suspended culture floats for Pacific Oyster (*Crassostrea gigas*) as well as a mobile work raft for farm product maintenance. A larger permanent processing float measuring 33 feet x 100 feet will house an office, laboratory, restroom, generator room, tumbling and sorting area, shop, as well as processing and refrigeration rooms. The float will be constructed of concrete and suitable for year round anchorage in this exposed location. Anchors will be 18 inch-diameter galvanized steel piling. Parcel 1 also contains a Sugar Kelp, Ribbon Kelp and Bull Kelp Longline System.

The hardening beach area consists of approximately 0.2 acres located from the 0-foot tide line. This site will accommodate market oysters toughening and assisting the elimination of bio-fouling to improve market shelf life and appeal.

The proposed Parcel 2 is located at mile 16.5 North Tongass Highway adjacent to the home of Trevor and Julie Sande. The parcel includes an Alaska District Corps of Engineers authorized residential dock which will be considered a commercial dock with the DNR amendment authorization and used for FLUPSY and related aquatic farm operations. Parcel 2 will also be used for float storage. Parcel 2 is a subtidal area consisting of 0.4 acres measuring 150' x 120' with a depth profile at mean low water of approximately -5' to -60'.

Trevor Sande dba Marble Seafoods, LLC met the annual reporting requirement for every year the lease was valid. The commercial use requirement must be met no later than the fifth year of the lease operations which is 2016 and it was met. The proposed amendment to the lease will be subject to the terms of DMLW's standard lease<sup>1</sup> document and any Special Stipulations based, in part, upon the following considerations.

### **Development Plan**

The Lease Amendment Development Plan dated April 1, 2016 with revisions on February 24, 2017 is accepted by SCRO as complete but subject to change based on agency and public review. Should the proposed amendment be granted, it is anticipated that the Development Plan will need to be updated throughout the life of the amended lease as activities and/or infrastructure are added or subtracted. All updates must be approved, in writing, by SCRO before any construction, deconstruction, replacement of infrastructure, or change in activity will be permitted. SCRO reserves the right to require additional agency review and/or public notice for changes that are deemed by SCRO to be beyond the scope of this decision.

### **Compliance with existing regulations and lease stipulations**

SCRO recognizes there are many challenges faced by aquatic farmers in Alaska. One such challenge is cooler water temperatures which lead to slower growth rates and more time on the farm before the product attains marketable size. In addition, difficulty obtaining seed during portions of the last few years has presented challenges for farmers attempting to maintain their stock at an optimal or projected level. Harvest window closures as a result of Paralytic Shellfish Toxin and Vibrio outbreaks also reduce the overall productivity of aquatic farms.

This said SCRO still has the responsibility to appropriately manage lands held in trust for the residents of the State of Alaska and to ensure the authorized aquatic farms are operating in accordance with the intent of the Aquatic Farm Act. The primary method used to accomplish this is the adoption of regulations governing how laws are to be implemented.

### **Key regulations for the management of aquatic farms are identified below:**

#### **11 AAC 58.510, Lease Utilization**

This regulation states the land being leased must fall within the scope of what is being proposed by the applicant and approved by DNR. Leases must be developed and utilized consistent with the approved development plan within 5 years or the lease may be terminated.

#### **11 AAC 63.030(b), Commercial Use Requirement (CUR)**

The CUR is one method DNR has available to determine whether or not the aquatic farm is being farmed to a commercial benchmark. The CUR was codified in the 1998 regulations as a quick and quantifiable measurement of productivity by the fifth year of operations (and beyond) and it provides DNR and ADF&G a means of identifying farms that may need closer monitoring. At the time the CUR was adopted, the primary species being farmed was the Pacific Oyster which had an established record of growth data in Alaskan waters available to regulators and industry members. At this time the CUR states a farm needs to be making annual sales in excess of \$3,000.00 per acre or \$15,000.00 per farm by the fifth year of operation of aquatic farm product, as defined in AS 16.40.199. Failure to meet CUR constitutes a default and may be cause for termination, per 11 AAC 63.110(7).

#### **11 AAC 63.110(7), General Lease Provisions, Development and Operations Plan**

The applicant has provided a site description and a project description to DNR and ADF&G with their application. They also provided a projection on how much planting and harvesting they plan to do during the 10-year term. DNR is aware of some of the issues faced by farmers when trying to establish any realistic long term projections. This is why the Development and Operation Plan is considered a fluid document and subject to change (with DNR approval) over the life of the lease in reaction to unanticipated changes in the basic business plan. Leaseholders are encouraged to communicate changes to plans with DNR frequently

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<sup>1</sup> DMLW Lease Agreement, form 102-111, as revised (last revision September 25, 2001). A copy of the standard lease agreement is available upon request.

to communicate how farming activities are progressing. Failure to develop the lease site in accordance with the approved development plan within five years of lease issuance will result in non-compliance and subject the lease to cancellation.

### **11 AAC 63.110(7), General Lease Provisions, Annual Reports**

Annual Reports (due by January 31<sup>st</sup> of each year) are valuable documents for both DNR and ADF&G. They are the main tool both agencies use to identify and understand issues the aquatic farmer may be encountering which could inhibit the productivity of an aquatic farm site. Reports also communicate if the site is being utilized in accordance with the Development Plan and if the CUR is being met annually, per 11 AAC 63030(b). By failing to submit complete and timely Annual Reports, the lessee not only falls out of compliance with aquatic farm regulations, but also inhibits DNR's constitutional responsibility to ensure the land is being utilized in accordance with the best interest of the residents of the state.

### **Proposed Action**

A central tenet of DNR's Mission Statement is to responsibly develop state resources by making them available for maximum use consistent with public interest. In keeping with this statement DNR proposes to issue Trevor Sande dba Marble Seafoods, LLC an amendment to his 10-year lease. This will enable DNR to adequately assess Trevor Sande's progress meeting the following regulations:

- 11 AAC 63.110 (7) requires compliance with an approved Development and Operation Plan and the timely submission of Annual Reports.
- 11 AAC 63.110 (11) (B) requires the lessee to provide the department with any records it has determined are necessary to verify the lessee's compliance with the lease provisions.
- 11 AAC 63.030(b) progress shown toward being able to meet the CUR prior to the end of the lease term (this can be done by supplying ADF&G and DNR annual reports).
- 11 AAC 58.510 requires lessee to make substantial use of the land within five years of the lease term and develop it in accordance with the approved Development and Operation Plan.

### **Hazardous Materials and Potential Contaminants:**

No hazardous materials or fuel will be stored on the lease parcels.

The use and storage of all hazardous substances must be done in accordance with existing federal, state and local laws. Debris (such as soil) contaminated with used motor oil, solvents, or other chemicals may be classified as a hazardous substance and must be removed from the sites and managed and disposed of in accordance with state and federal law.

### **Lease Performance Guaranty (bonding):**

In accordance with 11 AAC 63.080 Trevor Sande dba Marble Seafoods, LLC has submitted a performance guaranty for the original lease site.

- **\$2,500.00 Performance Bond:** This bond will remain in place for the life the proposed amended lease. The bond amount is based upon the level of development, amounts of hazardous material/substances on site, and the perceived liability to the state. This bond will be used to insure the applicant's compliance with the terms and conditions of the lease issued for their project. This bond amount will be subject to periodic adjustments and may be adjusted upon approval of any amendments, assignments, re-appraisals, changes in the development plan, changes in the activities conducted, or changes in the performance of operations conducted on the authorized premises, and as a result of any violations to one or more of the authorizations associated with this project.
- **Reclamation Bond:** SCRO is reserving the right to require a reclamation bond due to non-compliance issues during the term of the lease or near the end of the life of the project.

**Insurance:**

When Trevor Sande dba Marble Seafoods, LLC was authorized a 10-year lease on November 1, 2011, insurance was not required. If a lease renewal is requested with the current lease expiration date of October 31, 2021, in accordance with 11 AAC 96.065, Trevor Sande dba Marble Seafoods, LLC will be required to submit proof of liability insurance to SCRO. Specifically, the State of Alaska must be listed as a "NAMED" insured party. Trevor Sande dba Marble Seafoods, LLC will be responsible for maintaining such insurance throughout the term of the renewed lease.

**Survey:**

In accordance with AS 38.04.045, this short term land lease does not require a survey. However, 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. Trevor Sande dba Marble Seafoods, LLC has submitted GPS coordinate point(s) for the four corners of each parcel in the leased area.

**Grant:**

The term for an aquatic farm site is 10 years, per 11 AAC 63.100. The term dates for the amended lease will remain as November 1, 2011 through October 31, 2021, dependent on the approval of the Final Finding and Decision.

**Compensation/Appraisal:**

DMLW has approved an administrative lease fee schedule for aquatic farm sites that meet the conditions listed within the schedule. The most current lease fee schedule will be used to establish the fair market rental each lessee must pay. Fees are subject to adjustment per AS 38.05.105. At this time the rates for aquatic farms are \$450/acre or partial acre and \$125 for each additional acre or partial acre. In accordance with the Aquatic Farmsite Fee Schedule, Report No. 2522-12, a breakdown of the lease fee will be as follows:

15.4 acres (1 x \$450) + (15 x \$125) = **\$2,325.00/per year**

The applicant has the option to have a site-specific appraisal done for each site, at the applicant's expense, before the lease amendment is issued, if they do not wish to use the DNR approved fee schedule. If an applicant opts for a site-specific appraisal, the division-approved appraisal will establish the rental for the lease and the fee schedule will no longer be an option.

**Assignment of Lease:**

The proposed amendment to the lease, if issued, may be transferred or assigned to another individual or corporation **only** with prior 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 the lease is not in good standing.

**Reclamation:**

In accordance with AS 38.05.090(b), all lessees must restore their lease sites to a "good and marketable condition" within a minimum of 120 days after the termination of their lease. What level of reclamation constitutes as being "good and marketable" is at the discretion of SCRO. DNR reserves the right to require a reclamation bond at any time.

**Agency Notice:**

An Interagency Review will be conducted and run concurrently with the Public Notice for a 30-day review starting on **March 29, 2017**. The deadline for agency comments is **5:00 PM April 27, 2017**.

The following agencies will be included in the review:

- DNR DMLW – Water
- DNR Southeast Land Office
- DNR Office of History and Archaeology/SHPO
- Department of Fish and Game – Habitat
- Department of Fish and Game – Aquatic Farm
- Department of Environmental Conservation – Shellfish
- Department of Transportation and Public Facilities

- United States Forest Service-Tongass National Forest
- U.S. Army Corp of Engineers
- U.S. EPA
- National Oceanic and Atmospheric Administration
- U.S. Coast Guard
- Ketchikan Gateway Borough
- Sealaska Corporation
- Ketchikan Indian Corporation
- Central Council of the Tlingit and Haida Indian Tribes of Alaska
- Cape Fox Corporation

**Public Notice of the Preliminary Decision:**

Pursuant to AS 38.05.945, the notice will be posted on the Alaska Online Public Notice System at <http://aws.state.ak.us/OnlinePublicNotices/Notices/Search.aspx> for at least 30 consecutive days per AS 38.05.945(b)(3). The post offices located in Ketchikan, Thorne Bay, and Ward Cove will be requested to post the notice of the Preliminary Decision per AS 38.05.945(b)(3)(C). Courtesy notices will also be mailed or e-mailed to neighboring property owners, permit/lease holders, and other interested parties on **March 29, 2017** for a 30-day public comment period.

**Comment(s):**

This decision is subject to both public and agency comments and all comments received by the comment deadline will be addressed in the Final Finding and Decision. Only those who comment and the applicant have the right to appeal this decision.

**Written comments about this project must be received in this office no later than 5:00 PM on April 27, 2017 to be considered.**

To submit comments, please choose one of the following methods:

Postal: Department of Natural Resources  
Southcentral Region Office  
ATTN: Karen Cougan  
550 West 7<sup>TH</sup> Avenue Suite 900C  
Anchorage, AK 99501-3577

Phone: 907-269-8543

E-mail: karen.cougan@alaska.gov


Fax: 907-269-8913

If public comments result in significant changes to the Preliminary Decision, additional public notice may be given. To be eligible to appeal the Final Finding and Decision, a person must provide written comments during the Preliminary Decision comment period per AS 38.05.035(i)-(m).

***Signature Page Follows***

**Recommendation:**

SCRO has completed a review of the information provided by the applicant, examined the relevant land management documents, and has found that this project is consistent with all applicable statutes and regulations. This decision considers the applicant's history and experience with aquatic farming, their proposed Development Plan, the existing uses in the area, and the overall benefit to the state's aquatic farm industry. It is the recommendation that the state issue Trevor Sande dba Marble Seafoods, LLC an amendment to the 10-year lease with the understanding that if the lessee fails to comply with the submission of the Annual Reports, Commercial Use Requirements, or with any other information the department requests, this will constitute a violation of the lease terms and steps may be taken to terminate the lease authorization(s).

 March 22, 2017  
Karen Cougan, Aquatic Farm Program Coordinator 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 an aquatic farm lease amendment for the remainder of the 10-year lease agreement to Trevor Sande dba Marble Seafoods, LLC, as described above. This application shall now proceed to public notice.

 3-22-17  
Clark Cox, Regional Manager Date  
Southcentral Region Land Office, Division of Mining, Land & Water

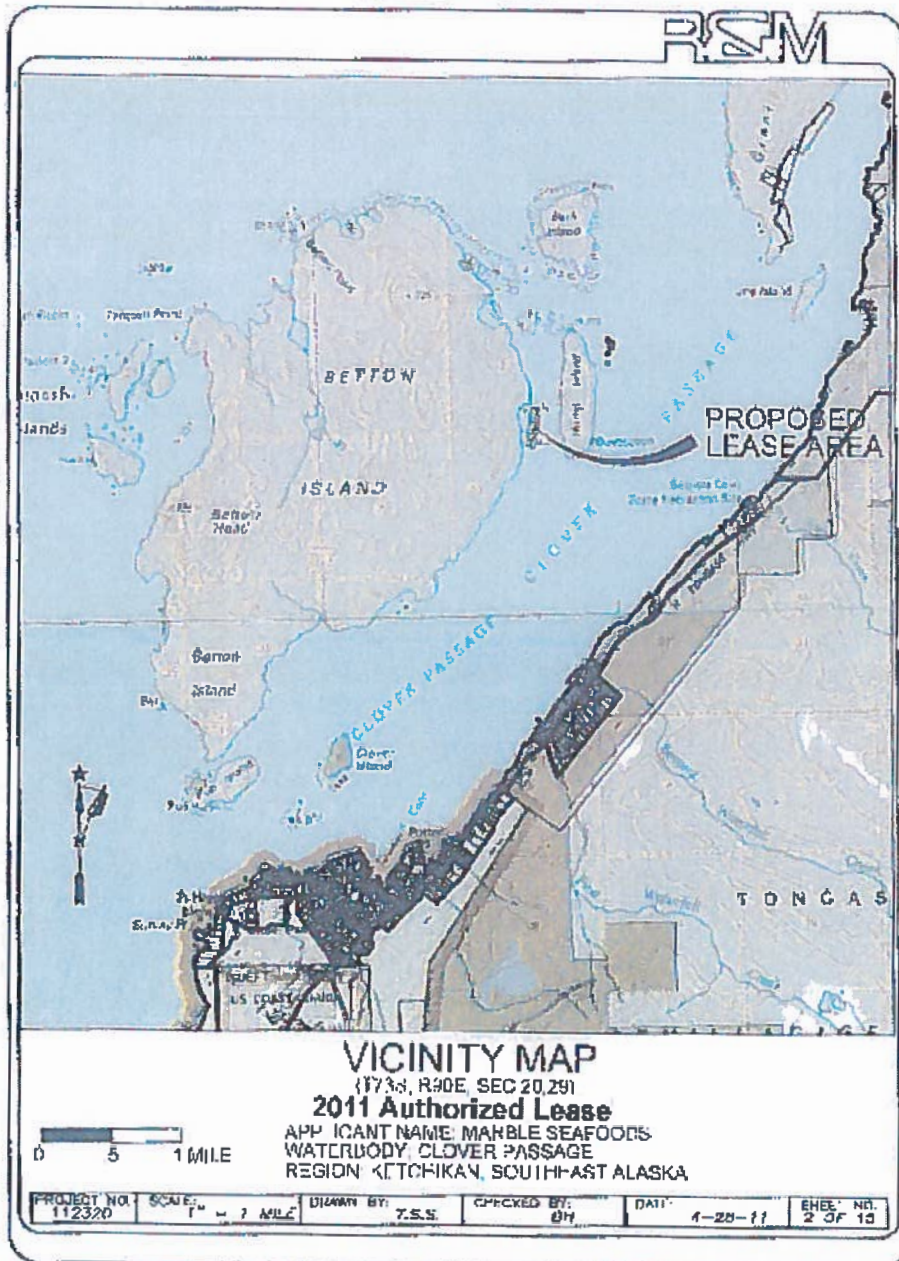
**Attachments**

Attachment A – Development Plan Vicinity Maps, Project Description (The complete Development Plan is available upon request.)

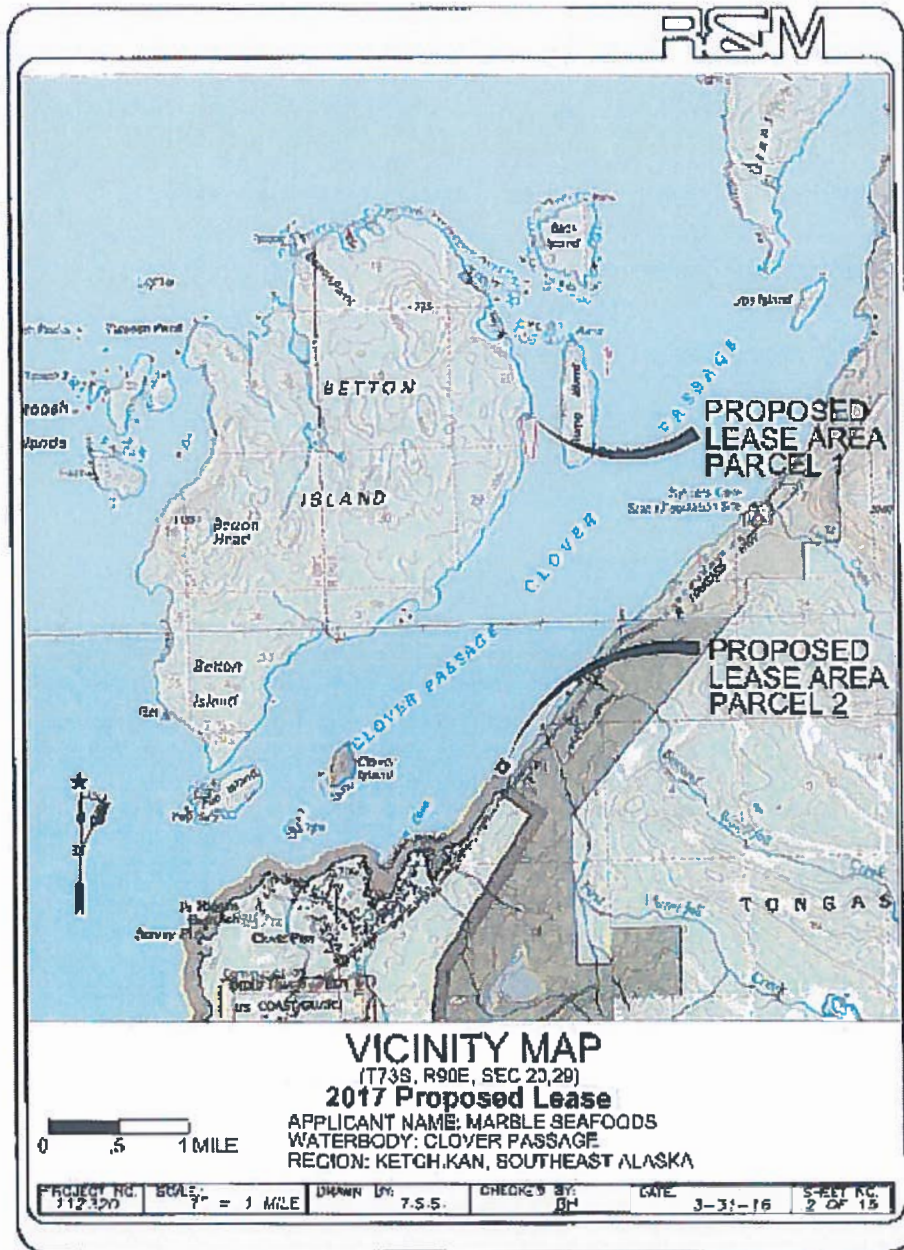
Attachment B - Central/Southern Southeast Area Plan Amendment and Land Classification Order



# Attachment A Development Plan



# Attachment A Development Plan



# Attachment A Development Plan

## Project Description

### Parcel 1

Parcel 1 includes both a subtidal raft and tray grow-out area and an intertidal hardening beach area. This parcel consists 15.0 acres with the width varying between 270' at the south and 350' at the north and the length at 1,500' with a depth profile at mean low water of approximately -20' to -80+' except at the north end where the hardening beach is located. Grow-out floats will be positioned in waters -25' and greater. The site will accommodate suspended culture floats for Pacific Oyster *Crassostrea gigas* as well as a mobile work raft for farm product maintenance. A larger permanent processing float measuring 33'x100' will house an office, laboratory, restroom, generator room, tumbling and sorting area, shop, as well as processing and refrigeration rooms. The float will be constructed of concrete and suitable for year round anchorage in this exposed location. Anchors will be 18" diameter galvanized steel piling.



Parcel 1 near NW corner looking South

## **Attachment A Development Plan**

The modified Parcel 1 includes the hardening beach parcel. This area consists of approximately 0.2 acres located from the 0' tide line (photo taken at slack tide of 0' low tide). This site will accommodate market oysters toughening and assisting the elimination of bio-fouling to improve market shelf life and appeal.



**Photo 2 Hardening Beach**

## Attachment A Development Plan

### Parcel 2

Parcel 2 is located at mile 16.5 North Tongass Highway adjacent to the home of Trevor and Julie Sande. The parcel includes an Alaska District Corps of Engineers authorized residential dock which will be considered a commercial dock with the DNR amendment authorization and used for FLUPSY and related aquatic farm operations. Parcel 2 will also be used for float storage. Parcel 2 is a subtidal area consisting of 0.4 acres measuring 150' x 120' with a depth profile at mean low water of approximately -5' to -60'.



**Photo 3 Proposed FLUPSY location where wood float is shown in the photos. Farm site can be seen in the background between the two islands.**

## **Attachment A Development Plan**

### **Site Component Description:**

**Parcel 1** will include (35) 24' x 24' oyster grow-out rafts once at full production. The grow-out rafts are constructed with non-treated 2"-by lumber, galvanized fasteners, and two rows of 4' x 8' foam filled plastic billets for floatation. Each raft will have the capacity to suspend a minimum of 50 culture stacks with potential for increased density. Each culture stack will be constructed using 10 Aquamesh stacked cage trays with plastic vexar box inserts in each tray. Each Aquamesh tray will measure 23" x 23" x 5" constructed of 1" vinyl coated wire mesh. The vexar insert is used to contain the smaller spat during initial grow-out and will likely remain in the trays through the grow-out cycle dependent on bio-fouling. Each culture stack measures 23" x 23" x 4'3" and will be suspended below the rafts with poly line bridles at staggered depths of - 5' to -15' with the ability to lower the stacks further if site conditions necessitate. The grow-out floats will be tethered to a longline system in groups of five rafts with the ability to remove an individual raft from the string if necessary for maintenance and harvest. This will allow the flexibility to either move the work raft along each string to maintain the cultures or bring each raft to the larger processing float. An anchor system will be established for each planned string series of floats. Current design at five floats per string will necessitate 7 strings. There will be three rows of steel pipe pile breakwater floats. These will be used for wave attenuation in the summer months and an attachment point for kelp longlines in the winter months.

The float and breakwater and anchor system will consist of two 6,000 lb. concrete anchors at the ends of each series of five rafts. A length of 4" chain and a 1 1/2" wire cable rode will rise from each anchor to a mooring buoy. A bridle of 1.5" cable with surface buoys will be used to secure the first and last raft in the string of five to the anchors and each additional raft in the center of the string will be attached to each other within a longline system. The longline anchor system is designed to allow single raft release along the string when necessary. The raft strings will be anchored at 15 degrees to the tidal flow to maximize water flow to the rafts while reducing resistance.

A work raft of 30' x 30' is also proposed for the grow-out site for culture maintenance and harvest. The proposed float will be constructed of foam filled concrete compartments with 2 ballast tanks for leveling. In addition, the float will have a fresh water tank for access to fresh water for equipment wash down and the ability for fresh water emersion baths for culture stacks as a potential anti-fouling method. A utility building for equipment storage and product processing for transport will also be built on the float. This building is designed to be 12' x 22' with covered area over the sorting and tumbling station. A mechanical sorting and tumbling apparatus will be positioned on the work raft including a tumbler, loading hopper, conveyer and sorting/ processing table. The only processing modes on site will be preparing product for transport to a shore side processing facility for final market prep and sale. A mechanical track

## **Attachment A Development Plan**

hoist will be positioned to one edge of the float for loading and unloading culture stacks from the grow-out rafts for maintenance and harvest. A battery bank and generator with an insulated hood for sound dampening and weather protection will be placed on the float for powering equipment such as the hoist and sorting and tumbling station. If cost effective, solar panels will be added to the building roof in the future to assist in battery charging and minimize need for the generator. Harvested product will be held on site in iced totes or dry refrigeration until transported to town for final processing for market. Restroom facilities will comprise of a composting toilet within the building on the work raft or will be a USCG approved marine toilet with holding tank on the transport vessel. No wastewater discharge will occur onsite. The work raft will be moored with the grow-out floats.

The hardening beach portion of Parcel 1 will be used for hardening and defouling activities. No beach development is projected accept for a simple longline system with rock anchors to attach 3' x 3' vexar grow-out bags to. This will allow a method of toughening the oysters to extend shelf life at market and assist in the final defouling. If the vexar bags prove not durable enough, Aquamesh trays with lids will be used instead.

No onsite facilities will be developed for living accommodations. Due to the close proximity to the road system and local marina within a relatively protected waterway, employees will be able to commute to the site in virtually all weather conditions. Without onsite accommodations, there will not be any wastewater discharges. The work float will be fitted with an incinerating toilet in the restroom.

Parcel 1 also contains experimental gear for Pacific Oysters Surface Culture Longlines as described below:

The floating plastic basket longline system is composed of anchors and a mooring buoy on each end, and floating oyster bags are clipped to the line using longline clips or attached with a rope. The lines are either set up as single longline systems or double systems (2 bags side by side). In the tray systems, the oyster trays are flipped periodically to air dry the surface to control fouling. The anchoring system is made up of 6000 lb. concrete anchors and 1.25" poly line.

Parcel 1 also contains a Sugar Kelp, Ribbon Kelp, Ribbed Kelp, and Bull Kelp Longline System as described below:

The kelp longline system is composed of anchors and a mooring buoy on each end, and a subsurface rope which hangs 7 feet from the ocean surface. The kelp spores are on a string which is wrapped around the subsurface rope and they maintain a constant depth from the surface using a depth control dropper. The spores are typically seeded onto the rope in late fall, and harvest occurs late spring of the next year. The anchoring system is made up of 6000 lb. concrete blocks and 1.25" diameter poly rope.

## **Attachment A Development Plan**

**Parcel 2** will consist of a floating upweller system capable of raising oyster seed from 3mm to 25mm in size. The upweller silos and trough units are manufactured by Hoopers Island Oyster Aquaculture Co. The upweller float will measure 16' x 30' and will be fastened to the existing concrete float which is secured with galvanized steel piling. The water flow from the individual 24" x 24" fiberglass silos will be dumped through a centrally located fiberglass trough, which is designed with a well where a 1 HP pump mounts. The controls for the pumps are mounted in a stainless enclosure. The water will be circulated with a 12" stainless hydrofoil prop. Each trough has a removable basket for removing seed. A portable dock hoist will be used to lift and sort the seed.

**Attachment B**  
**Central/Southern Southeast Area Plan Amendment and Land Classification**  
**Order**

The Commissioner of the Department of Natural Resources finds that the attached amendment to the Central/Southern Southeast Area Plan meets the requirements of AS 38.04.065 and 11 AAC 55.010-030 for land use plans and hereby adopts the amendment. The attached document, 'Central/Southern Southeast Area Plan, Plan Amendment, Management Unit KT-17: Hump Island/Clover Passage' provides background and justification for the amendment. The Department of Natural Resources will manage state land consistent with this amendment.

- KT-17 Designation: Ha-Habitat, Ru-Public Recreation-dispersed use
- KT-17a Designation: Gu-General Use

The amendment to Management Unit KT-17 affects approximately 339 acres in Sections 20 and 29 of T. 73S, R. 90E, Copper River Meridian.

Concur:

\_\_\_\_\_  
Brent Goodrum, Director  
Division of Mining, Land and Water

\_\_\_\_\_  
Date

Approved:

\_\_\_\_\_  
Andy Mack, Commissioner  
Department of Natural Resources

\_\_\_\_\_  
Date

**Attachment B**  
**Central/Southern Southeast Area Plan Amendment and Land Classification**  
**Order**

**ATTACHMENT**  
**CENTRAL/SOUTHERN SOUTHEAST AREA PLAN**  
**PLAN AMENDMENT**  
**Management Unit KT-17: Hump Island/Clover Passage**  
**ADL 108094**  
**March 17, 2017**

**Location:** The tidelands, submerged lands, and shorelands in T. 73 S, R. 90 E, Sections 20, 21, 29, and 30 (portions of), Copper River Meridian. The area containing approximately 780 acres is referred to as Management Unit KT-17 of the Central/Southern Southeast Area Plan, and is located to the east of Betton Island, to the north and south of the tideland boundary.

**Authority:** The authority to revise plans derives from AS 38.04.065(b), and 11 AAC 55.030(f) defines when a revision constitutes a plan amendment.

**Current Plan:** The Central/Southern Southeast Area Plan (CSSAP) currently designates Management Unit KT-17 as Wildlife Habitat (Ha) and Public Recreation (Ru). Within the CSSAP, the managed resources/ intent for this unit is as follows:

“Within the area designated Ha and Ru, protect the habitat resources which include Pacific herring spawning areas (spring seasonally). The area designated Ha and Ru is to be managed to be consistent with the recommendation for establishment of a marine state park on the adjacent upland parcel. The tidelands within the area designated Ha and Ru are recommended for inclusion in the state marine park, and are to be managed consistent with the eventual development of this use. Floating facilities, except those intended to support recreation uses, are prohibited. The remainder of the area designated Ru is to be managed to insure protection of the vista from Revillagigedo Island.”

The current plan would not allow for aquatic farming on the east side of Betton Island.

**Proposed Plan Amendment:** The amendment to the CSSAP will divide Management Unit KT-17 into two Management Units: KT-17 (to the south of the tideland boundary) and KT-17a (to the north of the tideland boundary). Following the amendment, Management Unit KT-17 would retain its designation and management intent, and Management Unit KT-17a would be designated General Use. The tideland, submerged land, and shoreland classification for the General Use designation is Resource Management Land, which will allow aquatic farming. See the revision to Map 3-24 included in the Land Classification Order for how Management Unit KT-17 will be split into two Management Units.

## Attachment B

### Central/Southern Southeast Area Plan Amendment and Land Classification Order

**Explanation:** From the Alaska Department of Natural Resources Office of the Commissioner, February 6, 1995, Department Order 100, Area and Management Plans: “Area plans should be amended when new information or changing social, economic, or environmental conditions warrant.”

In addition, the General Framework section in Chapter 2 of the Central/Southern Southeast Area Plan, states that the plan seeks to minimize land use conflicts through plan guidelines and intent rather than through prohibitions. When the Central/Southern Southeast Area Plan was published in November 2000, aquatic farming was not considered for Unit KT-17. Under the “Resources for Which Unit is to be Managed” section, it specifies “the tidelands within the area designated as Ha and Ru are recommended for inclusion in the state marine park, and are to be managed consistent with the eventual development of this use.” However, the state marine park (Betton Island State Marine Park) has been developed to the south of the tideland designation boundary. The Division of Parks and Outdoor Recreation confirms that there are no plans to develop a state marine park to the north of the tideland boundary, where proposed Management Unit KT-17a lies.

Furthermore, the resource values in proposed Management Unit KT-17a are not of sufficiently high value to merit designation as a primary use (11 AAC 55.200). This land does not have habitat values as in KT-17a which abuts the Betton Island State Marine Park. It does provide for a myriad of uses which can be accommodated with appropriate considerations. Tidelands in proposed Management Unit KT-17a are recognized to contain important fisheries for subsistence, recreational, and/or commercial harvest. Pacific herring spawning areas (spring seasonally) will be protected. This is an ideal location for limited authorization of aquatic farming. Alaska Statute (AS 38.05.083) provides that state tidelands and submerged lands may be used, under lease, for aquatic farming or related hatchery operations. Floating facilities intended to support recreation uses and floating facilities associated with aquatic farming or related hatchery operations may be authorized for Unit KT-17a.

**Alternatives:** There are two alternatives to consider regarding Management Unit KT-17 of the CSSAP. The first alternative would not divide Management Unit KT-17 into two Management Units, KT-17 and KT-17a. Aquatic farming would not be allowed on the east side of Betton Island, to the north of the Betton Island State Marine Park. The second alternative would be to divide Management Unit KT-17 into Management Units KT-17 and KT-17a. The classification of Management Unit KT-17 would remain the same, and Management Unit KT-17a would be classified as Resource Management Land. The classification of KT-17a as Resource Management Land would allow authorization of aquatic farm leases which will provide opportunities to increase income and diversify the state's economy through the use of state tidelands and submerged lands.

Thus, of the two alternatives, the most appropriate is to divide Management Unit KT-17 into two units, KT-17 and KT-17a. The classification of Management Unit KT-17 will remain the same; and Management Unit KT-17a will be classified as Resource Management. The classification of

**Attachment B**  
**Central/Southern Southeast Area Plan Amendment and Land Classification**  
**Order**

KT-17a will allow floating facilities associated with aquatic farming or related hatchery operations.

The boundaries of the Central/Southern Southeast Area Plan (CSSAP) Management Unit KT-17 and KT-17a are modified as detailed in the table below and depicted on the attached map by this plan amendment. The modified boundaries update CSSAP Map 3-24. The management intent and descriptions of these units in Chapter 3: Region 5- Ketchikan have been modified by this plan amendment.

| CSSAP Unit | Legal Description of land  | Acreage | Current Designation | Designation by this action |
|------------|--|---------|---------------------|----------------------------|
| KT-17      | T. 073S, R. 090E, Sections 31 and 36 (portions of) Copper River Meridian; south of the tideland boundary           | 441     | Ha, Ru              | Ha, Ru                     |
| KT-17a     | T. 073S., R. 090E, Sections 20, 21, 29, and 30 (portions of) Copper River Meridian; north of the tideland boundary | 339     | Ha, Ru              | Gu                         |



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

LAND CLASSIFICATION ORDER  
NO. SE-00-001A07

- I. Name: Plan Amendment to Management Unit KT-17, Hump Island/Clover Passage of the Central/Southern Southeast Area Plan
- II. The classifications identified in Part III are based upon the following:
- A. Central/Southern Southeast Area Plan (CSSAP), adopted November 1, 2000
  - B. Area Plan Amendment and Map (attached)
  - C. Preliminary Decision issued March 22, 2017 for ADL 108094

III. Classification

| Legal Description  | Acreage | Acquisition Authority  | Existing Classification             | Classification by this Action |
|--|---------|--|-------------------------------------|-------------------------------|
| T. 73 S, R. 90 E, Sections 20, 21, 29, and 30 (portions of), Copper River Meridian, Alaska as depicted on the map in the attached Area Plan Amendment. | 339     | The Submerged Lands Act of 1953; The Equal Footing Doctrine: The Public Trust Doctrine | Wildlife Habitat, Public Recreation | Resource Management Land      |

- IV. This order is issued under the authority granted by AS 38.04.065 and AS 38.05.300 to the Commissioner of the Department of Natural Resources. The above described lands are hereby designated and classified as indicated. Nothing shall prevent the reclassification of these lands if warranted in the public interest.

Classified: \_\_\_\_\_ Date: \_\_\_\_\_  
 Andrew Mack, Commissioner  
 Department of Natural Resources

## **Request for Reconsideration Procedures**

A person affected by this decision may request reconsideration, in accordance with 11 AAC 02. Any reconsideration request 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 Andy Mack, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918; or sent by electronic mail to [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov).

If reconsideration is not requested by that date or the commissioner does not order reconsideration on his own motion, this decision goes into effect as a final order and decision on the 31st calendar day after issuance. Failure of the commissioner to act on a request for reconsideration within 30 calendar days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request reconsideration of this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.