

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

**Southeast Regional Land Office**

**Preliminary Decision**

**ADL 108268**

**Haida Corporation**

Application for Lease

AS 38.05.075(c)

**Requested Authorization**

Haida Corporation (“applicant”) is requesting a 30-year non-competitive lease allowing continued maintenance and further development of a marine access facility on state tide and submerged lands in Sukkwan Strait near Hydaburg, Prince of Wales Island. The marine access facility was previously authorized under lease ADL 103223, effective from November 16, 1983 through November 15, 2013, and continues to support in-water log storage and ship-loading operations occurring on adjacent tide and submerged land. More specifically, this access facility is used to transport fuel, materials, equipment, and personnel to operations associated with a separate lease application submitted by Sealaska Timber Company, LLC (ADL 108818).

The total area requested by the applicant is 8.7149 acres. The applicant’s development plan is included as **Attachment 1**. This request is for continued maintenance of existing improvements and additional construction of a new dock. No new fill or further alteration of the line of mean high water (“MHW”) is requested.

Existing improvements include:

- Fill pad, amount of material indeterminate.
- A barge ramp, 40 ft. wide and 210 ft. long (8,400 sq. ft.), consisting of 1,200 cy of fill.
- One stiff-leg, 190 ft. in length, connected to a boom on adjacent log storage facilities.
- Two anchors, one-ton each.
- One anchor, six-tons.
- Two shore-ties connected to a mooring buoy on adjacent land.

New improvements include:

- One walkway, 105 ft. x 5 ft. (525 sq. ft.), comprised of three sections of 35-foot stringer logs with 5-foot surface planking.
- One floating dock, 12 ft. x 28 ft. (336 sq. ft.), comprised of float logs and surface planking.
- Two concrete anchors, one ton each.
- Two galvanized cable pennant lines, each 100 ft. in length.
- Two galvanized cable shore tie lines, each 125 ft. in length.

Additionally, an unoccupied barge will be located on-site.

### **Proposed Authorization**

The Department of Natural Resources (“DNR”), Division of Mining, Land and Water (“DMLW”) is proposing to issue an entry authorization and lease of 8.7149 acres of tide and submerged land for the above referenced marine access facility. The proposed entry authorization and lease, included as **Attachment 2**, will be issued non-competitively to the applicant in accordance with AS 38.05.075(c) for a combined term of 30 years, subject to terms described in this preliminary decision.

This preliminary decision and the proposed authorization may be modified after public comment.

### **Authority**

AS 38.05.035, AS 38.05.070, AS 38.05.075

### **Administrative Record**

The administrative record for this case is contained in the case file serialized as ADL 108268. The *Prince of Wales Island Area Plan Amendment* (May 2008) and *Prince of Wales Island Area Plan* (October 1998) are incorporated by reference.

Cases associated with this preliminary decision include:

- ADL 103223 – Expired lease of Tract A, ATS 1165, applicant
- ADL 105851 – Expired lease of Tract B, ATS 1165, applicant
- ADL 106228 – Expired lease for log storage and ship moorage operations, STC
- ADL 108327 – Unauthorized use associated with shipwreck of the “Haida Girl”, Anthony Christianson/Hydaburg Cooperative Association
- ADL 108328 – Unauthorized use associated with shipwreck of the “Tiny Tim”, Anthony Christianson/Hydaburg Cooperative Association
- ADL 108491 – Unauthorized use of unsurveyed area at Saltery Point, applicant
- ADL 108818 – Lease application, two sites at Saltery Point and Crab Trap Bay, STC

### **Scope of Decision**

The scope of this decision is limited to (1) reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and regulations; (3) facts pertaining to the land or resources; and (4) issues material to the determination that issuing the authorization will best serve the interest of the State of Alaska (AS 38.05.035(e)(1)–(2)).

### **Description**

**Geographic Location:** Tide and submerged land in Sukkwan Strait, a navigable waterbody, adjacent to Saltery Point about two miles south of Hydaburg on Prince of Wales Island at approximately 55.1827°N, 132.8013°W (WGS84).

**Legal Description (“Proposed Leasehold”):** Tract A, Alaska Tideland Survey (“ATS”) No. 1165 within Sections 19 and 20, Township 77 South, Range 84 East, Copper River Meridian, containing 8.7149 acres, more or less, according to the survey plat filed in the in the Ketchikan Recording District on May 18, 1981 as Plat No. 81-16.

**Other Land Information:**

Local Government:	Hydaburg, Unorganized Borough
Regional Corporation:	Sealaska Corporation
Village Corporation:	Haida Corporation
Federally Recognized Tribe:	Hydaburg Cooperative Association

**Title**

The State of Alaska (“the state”) holds title to the surface and subsurface estates of the subject land under the Submerged Lands Act of 1953, Alaska Statehood Act, and Equal Footing Doctrine. Management is subject to the Public Trust Doctrine. Title is subject to valid existing rights, including reservations, easements, and exceptions in the US 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.

**Third Party Interests:** The applicant conducts log storage and ship loading operations at Saltery Point with STC. STC maintains the stiff leg, anchors, and shore-ties within the proposed leasehold and intends to build the new walkway and dock. Further, all permits from the US Army Corps of Engineers (“USACE”) and the Alaska Department of Environmental Conservation (“DEC”) related to log storage and transfer operations at the site are issued to the STC rather than the applicant. A Memorandum of Understanding (“MOU”) between the applicant and the STC is included in the development plan (Attachment 1). STC will be invited to review and comment on this decision.

**Adjacent Landowners:** The applicant owns the uplands contiguous to the proposed leasehold described as Gov’t Lot 1, Section 19, Township 77 South, Range 84 East, Copper River Meridian. Hunter Bay Properties, LLC owns nearby uplands, surveyed as US Survey 580, and will be invited to review and comment on this preliminary decision.

**Planning and Classification**

State land in this area is subject to the provisions outlined in the *Prince of Wales Island Area Plan Amendment* (“POWIAPA”) for Revised Management Unit 19: Hydaburg/Cordova Bay (Map 6), Management Subunit HT-17: Sukkwan Strait.

According to the POWIAPA (2008), Management Unit HT-17 encompasses 90 acres and consists of two distinct locations areas in Sukkwan Strait, an area to the north near Saltery Point and an area to the south near Crab Trap Bay. Multiple Log Transfer Facility (“LTF”) sites in both the northern and southern areas are identified. Management is to be consistent with the requirements for LTFs and Sort Yards specified in the POWIAPA’s area-wide guidelines for forestry and with all other applicable state and federal requirements. The designated land use is Forestry, which converts to the classification of Forest Land as defined by 11 AAC 55.070 (POWIAPA, c 2 p 78).

The proposed lease is for a marine access facility that supports marine log storage and transfer operations, which is consistent with the designation, classification, and management intent for state land in this area. The improvements were formerly authorized under a lease issued to the applicant, ADL 103223, which is referenced in the POWIAPA. Bark accumulation associated with marine log transfer and storage at

Saltery Point is regulated by the DEC in accordance with General NPDES Permit, AKG-70-1000, and discharge authorizations issued to STC, AKG-70-1031 and AKG-70-0061.

**Mineral Orders:** The proposed leasehold does not fall within areas delineated in Administrative Mineral Closing Order No. 1080 (POWIAPA, Appendix B). The adjacent uplands are also not subject to mineral closing order. Neither a mineral closing order nor a leasehold location order is necessary or appropriate.

**Local Planning:** Hydaburg is a 1<sup>st</sup> Class City in the Unorganized Borough. The City of Hydaburg will be invited to review and comment on this decision.

**Traditional Use Finding:** In accordance with AS 38.05.830 and after due consideration, the DMLW does not anticipate this land use to conflict with traditional uses of the land or significantly affect the population density of the area. If information is provided during the public comment period that clearly demonstrates otherwise, the DMLW may modify this decision.

#### **Access**

**Physical and Legal Access:** The proposed leasehold can be accessed by boat or floatplane over Sukkwan Strait, a navigable waterbody, or by road over the applicant's contiguous upland property. The MOU included in the applicant's development plan (Attachment 1) documents an agreement between applicant and STC regarding access and shared use of lands at Saltery Point. Should the DMLW issue both the proposed lease to the applicant and a lease to STC, both leases will incorporate the MOU by attachment.

**Access to and along Public Waters:** The people of the state have a constitutional right to free access to and use of the navigable or public water of the state (AS 38.05.126(a)). In accordance with AS 38.05.127 and 11 AAC 51.045, the DMLW reserves public access easements to and along these waters before the sale, lease, grant, or other disposal of interest in state land underlying or adjacent to these waters. However, it is not necessary to reserve an easement to or along the proposed leasehold as a 50-foot linear pedestrian easement is already reserved along the seaward side of mean high water along Tract A, ATS 1165 (Plat No. 81-16, KRD).

Public access may be unsafe within the access easements during operations; therefore, the DMLW will allow temporary closure of the public access easement. The following stipulation is included in the proposed lease:

"In addition to Condition #10 of the standard lease document: The linear public access easement reserved under this lease shall be 50 feet in width, extending seaward from the line of mean high water or ordinary high water. In accordance with AS 38.05.127(a)(2), this public access easement may be temporarily closed for short periods when operations may pose a risk to public safety. The DMLW will defer to the lessee to determine the appropriate level of notification to be provided to the public should temporary closure occur. If the DMLW receives notification of concerns or issues related to any restriction to public access, the DMLW may require alternative measures to ensure that public access can be reasonably provided."

### **Environmental Risk**

Diesel oil, hydraulic fluid, and lubricants are loaded onto vessels over the proposed leasehold. No storage or disposal of these substances will occur nor will vessels be refueled on site. Environmental risk associated with bark accumulation on state tide and submerged lands is regulated in accordance with the DEC's NPDES General Permit, AKG-70-1000, and discharge authorizations AKG-70-1031 and AKG-70-0061.

The use and transfer of hazardous substances must be done in accordance with existing federal, state, and local law.

### **Background**

The DMLW has authorized the applicant and STC to use of state tide and submerged land at Saltery Point for log storage and transfer facilities since the 1980s. The applicant leased Tract A, ATS 1165 from November 16, 1983 to November 15, 2013 for the purpose of operating a log transfer facility (ADL 103233).<sup>1</sup> The applicant applied for renewal of their lease in 2014 and made multiple modifications between 2014 and 2018 to their lease request.

The first application to renew the lease, dated February 10, 2014, was submitted with an application to renew an expired 20-year lease of the adjacent tract, Tract B, ATS 1165 (ADL 105851<sup>2</sup>, formerly ADL 103429<sup>3</sup>). The applicant then requested authorization for Tracts A and B, ATS 1165 be combined under one new lease. Later, an additional, unsurveyed area north of Tract B was added to the lease request. This additional, unsurveyed area consists of approximately 10 acres of tide and submerged land and is subject of unauthorized use case ADL 108491. Tract B, ATS 1165 and the additional, unsurveyed area were ultimately withdrawn from the applicant's request and are now being considered with STC's lease application (ADL 108818). The DMLW is concurrently adjudicating the associated lease application from STC with this preliminary decision (ADL 108818), which incorporates additional tide and submerged land previously leased to STC (ADL 106228)<sup>4</sup>.

The DMLW received the application package subject to this preliminary decision on April 11, 2018, after STC and the applicant developed plans to install a new dock and ramp.

**Unauthorized Uses:** Tracts A and B of ATS 1165 have been occupied and used without authorization since the applicant's previous leases, ADL 103223 and ADL 105851, expired on November 15, 2013 and November 15, 2014. Two shipwrecks also occurred within or in the vicinity of ATS 1165 in 2013 (ADL 108327 and ADL 108328). Further, log storage improvements have occupied the unsurveyed area north of Tract B, ATS 1165, since last permitted to the applicant in the 1990's (ADL 108491). Supplemental adjudication memorandums for cases ADL 103223,

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<sup>1</sup> ADL 103233: Haida Corporation, 30-year lease, effective 11/16/83- 11/15/13, Doc No. [1984-001671-0](#).

<sup>2</sup> ADL 105851: Haida Corporation, 20-year lease, effective 11/16/94 - 11/15/14, Doc No. [1994-005499-0](#).

<sup>3</sup> ADL 103429: Haida Corporation, 10-year lease, effective 11/16/83 - 11/15/93, Doc No. [1984-001672-0](#).

<sup>4</sup> ADL 106228: Sealaska Timber Corporation, 10-year lease, effective 2/1/03-1/31/13, Doc No. [2003-002008-0](#).

ADL 105851, ADL 106228, ADL 108491, ADL 108327, and ADL 108328 are included as **Attachments 3-8**. The Compensation section below addresses fees owed to the state for unauthorized land uses.

**Related Actions:** Should the DMLW issue the proposed lease and lease the areas subject to ADL 105851, ADL 106228, and ADL 108491 to STC, the DMLW will close cases ADL 103223, ADL 105851, ADL 106228, and ADL 108491.

### **Application Review**

Application materials associated with this lease request, filed under ADL 103223, were distributed to agencies for a 30-day review and comment period. This review was held in tandem with agency review of the application for lease renewal of ADL 105851 for Tract B, ATS 1165. While the application has since been updated and the applicant is no longer pursuing a lease of Tract B, ATS 1165, the DMLW determined that additional agency review prior to public notice was not necessary. The DMLW will invite agencies to review and comment on this preliminary decision during the public comment period.

The 30-day review period for the application filed under ADL 103223 began August 25, 2014 and ended September 24, 2014. Notice of the application was posted on Alaska Online Public Notice website, and sent to the following state agencies: Department of Environmental Conservation, Commissioners Office; Department of Fish & Game, Division of Habitat, and Division of Wildlife Conservation; and Department of Natural Resources, Division of Forestry, and Division of Parks and Outdoor Recreation, Office of History and Archaeology.

The following entities were also provided notice: City of Hydaburg; Haida Corporation; Hydaburg Post Office; National Marine Fisheries Services, Habitat Conservation Division; Sealaska Corporation; Southeast Alaska Conservation Council; Southeast Soil and Water Conservation District; US Army Corps of Engineers, Regulatory Division; and US Forest Service, Tongass National Forest.

**Comments:** Four comments were received and are summarized as follows.

1. Office of History and Archaeology (OHA) – August 26, 2014

The Alaska Heritage Resources Survey (AHRS) database indicated that there are no recorded cultural resource sites within the proposed lease area; however, state law requires all activities requiring licensing or permitting from the state to comply with the Alaska Historic Preservation Act.

**DMLW Response:** A stipulation requiring compliance with the Alaska Historic Preservation Act is included in the proposed lease.

2. Haida Corporation (applicant) – August 27, 2014

The applicant stated that the lease will support the current and future economic development in the Hydaburg area.

**DMLW Response:** The DMLW recognizes the economic benefit to the region from the proposed land use.

3. Sealaska Timber Corporation – September 4, 2014

Sealaska Timber Corporation, now recognized as Sealaska Timber Company LLC, supports applications to renew ADL 103223 and ADL 105851, further stating:

“The Saltery Point Log Transfer Facility and Log Storage Area have a long history of use in the region dating back to the early 80’s. Located approximately ¼ mile from Saltery Creek, this LTF has a proven record of coexisting with other interests in the region including fish habitat, wildlife habitat, and other economic and subsistence interests. Previous bark dive survey records show evidence that degradation due to bark accumulation at this site is not an issue. The LTF and LSA [log storage area] are located in areas that prevent grounding of log rafts. Timber harvesting continues to be an important piece of the economy in the region with the Saltery Point LTF a primary part of the transportation system needed to move logs to the market place.”

DMLW Response: The applicant is no longer seeking renewal of ADL 105851. No further response from the DMLW is required.

4. Alaska Department of Fish & Game (“ADFG”) – October 2, 2014

The ADFG had no objection even though there are important fish and wildlife resources in the area. The ADFG found that the site appeared to be outside the 300-foot designation from anadromous streams and so does not expect impacts to fish habitat or eel grass beds.

DMLW Response: No further response from the DMLW is required.

### **Recommended Terms and Deliverables**

**Authorization Type and Term:** A lease of approximately 8.749 acres issued non-competitively to the applicant in accordance with AS 38.05.075(c). The proposed lease is to authorize continued use of 8.719 acres of tide and submerged lands for the requested marine access facility for a 30-year term. Prior to issuance of the lease, the DMLW will issue a three-year entry authorization to allow the applicant use of the site while completing an appraisal. The proposed entry authorization is included in the total term of the proposed lease. The proposed entry authorization and lease, included as Attachment 2, is the standard DMLW Lease Agreement (form 102-111, revised May 2001) with additional stipulations and the applicant’s development plan attached.

Upon expiration, completion, or termination of the lease, the site shall be vacated and all improvements and personal property removed, including all anchors and the fill placed beyond the record line of mean high water (per ATS 1165). The site shall be left in a clean, safe, and marketable condition acceptable to the DMLW.

**Entry Authorization:** Prior to lease issuance, the DMLW will issue an entry authorization allowing the applicant to use the site while acquiring an appraisal, which is pre-requisite to issuance of the proposed lease. The proposed entry authorization is for a term of three years and would be issued after the final decision becomes effective. Provided the applicant complies with all terms of the entry authorization, the proposed lease will be issued once the appraisal is completed and accepted by the DMLW’s Appraisal Unit. The total 30-year term of the proposed lease includes the three-year term of the entry authorization.

**Appraisal:** In accordance with AS 38.05.840(a), the applicant must provide an appraisal to determine fair market value of the proposed leasehold. The appraisal must be prepared by a licensed appraiser approved by the DMLW Appraisals Unit and the cost shall be borne by the applicant.

**Compensation:** As established by 11 AAC 58.410(b), the annual land use fee shall be the minimum fee of \$1,000.00 until a fair market value of the subject parcel has been determined by appraisal. If fair market value rent is determined to be an amount less than \$1,000.00 per year, then the annual fee land use shall remain at \$1,000.00. If fair market value rent is determined to be greater than \$1,000.00, then the annual land use fee will be adjusted and the applicant will be required to pay the difference between payments made during the term of the entry authorization.

**Periodic Rate Adjustment:** In accordance with AS 38.05.105, the annual land use fee payment will be subject to adjustment at five-year intervals after the issuance of the lease.

**Payment for Land Use without Authorization:** Prior to issuance of the proposed entry authorization, the DMLW must receive payment for unauthorized use of the proposed leasehold and for unauthorized uses associated with this request. More information about the following cases and fees incurred can be found in the supplementary attached adjudication memorandums.

*ADL 103223:* \$2,050.00 per year or \$170.84 per month for land use from November 16, 2014 to the date authorization is issued or improvements are removed.

*ADL 106228:* \$4,950.00 per year or \$412.50 per month for land use from February 1, 2016 to the date authorization is issued or improvements are removed.

*ADL 105851:* \$1,100.00 per year or \$91.67 per month for land use from November 16, 2014 to the date authorization is issued or improvements are removed.

*ADL 108491:* \$1,375.00 per year for six years, totaling \$8,250.00.

**Performance Guaranty:** Performance guaranties provide a means to pay for corrective action if a lessee fails to comply with the lease requirements. The amount of the performance guaranty is based on the scope and the nature of the activity and the potential cost of restoring the site. The DMLW determined that the performance guaranty for the proposed lease is \$20,000.00.

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:** The applicant will be required to 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 \$1,000,000.00 combined single limit per occurrence. If the applicant's policy contains



higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished prior to the issuance of the entry authorization 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 cancelling, not renewing, or making material changes to conditions to the policy. Failure to furnish satisfactory evidence of insurance, or lapse of the policy, is a material breach of the authorization and shall be grounds, at the option of the State of Alaska, for termination of the lease.

**Workers' Compensation Insurance:** The applicant will be required to provide and maintain, for all its employees, Workers' Compensation Insurance as required by AS 23.30.045. Where applicable, coverage must comply with any other statutory obligations, whether federal (i.e., U.S.L.&H., or, Jones Act) or other state laws in which employees are engaged in work on the leased premises. The insurance policy must contain a waiver of subrogation clause in favor of the State of Alaska.

All insurance policies shall comply with, and be issued by, insurers licensed to transact the business of insurance under Alaska Statute, Title 21. The policy shall be written on an "occurrence" form and shall not be written as a "claims made" form unless specifically reviewed and agreed to by the Division of Risk Management, Department of Administration. The State of Alaska must be named as an additional named insured on the policy with respect to the operations of the applicant on or in conjunction with the leased premises, referred to as ADL 108268.

#### **Recommendation and Preliminary Decision**

**Adjudicator's 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 the attached entry authorization and lease. This preliminary decision can be distributed to the public and those entities identified in AS 38.05.945 for the purpose of providing an opportunity to review and submit comments.

  
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Megs Harris, Natural Resources Specialist II


7.9.18  
\_\_\_\_\_  
Date

**Unit Manager's Concurrence:** I have reviewed with the adjudicator's recommendation and concur.

  
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Virginia Batts, Natural Resources Manager I

7/11/18  
\_\_\_\_\_  
Date

**Regional Manager's Preliminary Decision:** It is the determination of the Department of Natural Resources, Division of Mining, Land and Water that it may be in the state's best interest to issue an entry authorization and lease to the applicant, as described above and in the attachments. This preliminary decision shall proceed to public notice.

  
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Lee V. Cole Jr., Southeast Regional Manager

7-11-2018  
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Date

Attachments:

- Attachment 1. Development Plan
- Attachment 2. Proposed Entry Authorization and Lease (drafts)
- Attachment 3. Supplemental Adjudication Memorandum for ADL 103223
- Attachment 4. Supplemental Adjudication Memorandum for ADL 105851
- Attachment 5. Supplemental Adjudication Memorandum for ADL 106228
- Attachment 6. Supplemental Adjudication Memorandum for ADL 108327
- Attachment 7. Supplemental Adjudication Memorandum for ADL 108328
- Attachment 8. Supplemental Adjudication Memorandum for ADL 108491

**PUBLIC NOTICE, FINAL DECISION AND APPEAL PROCESS**

Public notice of this preliminary decision will be given in accordance with AS 38.05.945. The DMLW will publish notice on the Alaska Online Public Notice website, accessed at [www.state.ak.us](http://www.state.ak.us), and request the Hydaburg Post Office to post notice. Notice will also be sent to the applicant, Anthony Christianson (sunken vessels, owner of record); City of Hydaburg; Haida Corporation, Hunter Bay Properties, LLC; Hydaburg Cooperative Association; Sealaska Corporation, Sealaska Timber Company, LLC, Southeast Alaska Conservation Council; Southeast Soil and Water Conservation District; the US Army Corps of Engineers; the US Coast Guard; the US Forest Service; and the US National Marine Fisheries Service.

The public is invited to comment on this preliminary decision. In order to ensure consideration, comments must be received in writing by the close of business on **August 13, 2018** by the DNR DMLW's Southeast Regional Land Office by mail at P.O. Box 111020, Juneau, Alaska 99811-1020, by fax at (907) 465-3886, or by email at [megs.harris@alaska.gov](mailto:megs.harris@alaska.gov). In order to establish appeal rights regarding this decision, interested parties are required by law to meaningfully participate in the decision process by commenting on this preliminary decision, in writing, prior to the comment deadline. Commenters should include their mailing address and telephone contact. Following the deadline, all timely written comments will be considered and this decision may be modified based on comments received.

If the DMLW determines that public comments indicate the need for significant changes to this decision, additional public notice will be given. If no significant changes are required, this preliminary decision, after any necessary minor changes, will be issued as a final decision. A copy of the final decision will be sent to all persons who comment on this preliminary decision. Persons who do not submit written comments during the comment period will have no legal right to appeal the final decision.