

2017
STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER

PRELIMINARY DECISION

ADL 226542

James Baumgartner dba Moody's Marina LLC.

Application for Lease

AS 38.05.070(c)

This Preliminary Decision (PD) 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 PD. The deadline for commenting is **5:00 PM November 16, 2018**. Please see the Comments section 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 (FFD).

Proposed Action:

The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Regional Office (SCRO) has received a request from James Baumgartner dba Moody's Marina LLC. (Moody's) to lease 0.76 acres of shoreland for 20 years. The proposed lease site is located on the shore of Lake Aleknagik at Mosquito Point, on the north shore of the Wood River. The location of the project area is further described as being within the NE1/4 of the SE1/4 of the SE1/4 of Section 25, Township 10 South, Range 56 West, Seward Meridian. Moody's is proposing to use this site for the continuing maintenance and operation of an existing bulkhead dock attached to private uplands.

SCRO is considering the issuance of a 20-year shoreland lease to Moody's for the continuing operation and maintenance of an existing bulkhead dock.

Scope of Review:

The scope of this decision is to determine if it is the State's best interest to issue a 20-year shoreland lease serialized as ADL 226542.

Authority:

This lease application is being adjudicated pursuant to AS 38.05.035(b) and AS 38.05.035(e) Powers and Duties of the Director; AS 38.05.070(c) Generally; AS 38.05.075(c) Leasing Procedures; and AS 38.05.945 Notice.

The authority to execute the FFD and the lease has been delegated to the Regional Managers of DMLW.

Administrative Record:

Case file ADL 226542 constitutes the administrative record for the Moody's lease application.

Legal Description, Location, and Geographical Features:

The state land where this proposed lease is located is described as follows:

- **Legal description:** NE1/4 of the SE1/4 of the SE1/4 of the SE1/4 of Section 25, Township 10 South, Range 56 West, Seward Meridian.
- **Geographical location:** Mosquito Point, Lake Aleknagik, 15 miles north of Dillingham
- **Approximate Lat/Long:** 59.2757 N, 158.6243 W
- **Area geographical features:** Shoreland
- **Existing surveys:** Alaska State Land Survey (ASLS) 2008-10
- **Municipality/Borough:** None
- **Native Corporations/Federally Recognized Tribes:** Bristol Bay Native Corporation and Choggiung Limited
- **Size:** 0.76 acres, more or less

Title:

A DNR Title Report (RPT-9576) issued on May 15, 2017 from DMLW's Realty Services Section, attests that the State of Alaska holds title to the subject shoreland under the Equal Footing Doctrine and the Tide and Submerged Lands Act of 1953.

Third Party Interests:

On September 28, 1997, Alaska Department of Parks and Outdoor Recreation (DPOR) applied for an ILMA for the region. On May 14, 1998, ADL 227395 was issued to DPOR for the waters and shoreline of Lake Aleknagik. Moody's Marina is located within the ILMA and may be subject to any future management plans DPOR may have for this ILMA. No objection was received from DPOR during the Agency Notice.

Classification and Planning:

The project area is subject to the 2005 Bristol Bay Area Plan (revised 2013), Region 5, Dillingham, Snake Lake, Nushagak Bay (map number 5), and the 2002 Wood-Tikchik State Park Management Plan (WTSPMP) Management Unit 9, Lake Aleknagik State Recreation Site. The proposed area is Designated by the WTSPMP. The designation for the proposed lease is Recreational Development p.9-31, Map 9-3. Areas designated as Recreational Development established within the State Park System are intended to be managed to meet the need for developed recreation facilities such as parking, boat launches, campgrounds, picnic areas, and information services. Section 8-1 of the Land Use Permit Matrix of the WTSPMP states:

“Generally compatible, although present use patterns and volumes do not warrant construction of launches within the park boundary”. The designation of Recreational Development is classified as Public Use recreation. Moody’s existed prior to the adoption of WTSPMP, therefore Moody’s is compatible with the designation.

Traditional Use Findings:

The proposed lease is located within an unorganized borough therefore, an additional consideration is required under AS 38.05.830.

The lower reaches of all streams that terminate at the Bristol Bay coast are subject to substantial tidal fluctuations. All five species of Pacific salmon return to Bristol Bay to spawn.

Subsistence hunting occurs throughout Alaska all year long and is central to the customs and traditions of many cultural groups in Alaska. For most rural Alaska Residents, subsistence hunting is critical to their nutrition, food security, and economic stability. In many rural areas, subsistence hunting, similarly to subsistence fishing, is considered as a part of normal routine of work. Depending on the community and area, moose, caribou, deer, bears, Dall sheep, mountain goats, and beavers are commonly harvested land mammals. Seals, sea lions, walruses, and whales make up the marine mammal harvest. There are no conflicts between Moody’s and the traditional uses of the area.

Access:

Access to the site is through private uplands and by boat on Lake Aleknagik.

Access Along Navigable and Public Waters:

Nearly all shore and tide lands in the State of Alaska are subject to an Along easement (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. At the proposed leasehold, the Along easement is 50-feet below the Ordinary High Water line.

Public Trust Doctrine:

Pursuant to AS 38.05.126, all authorizations for the proposed lease will be subject to the principles of the Public Trust Doctrine; specifically, the right of the public to use navigable waterways and the land beneath them for: navigation, commerce, fishing, hunting, protection of areas for ecological studies, and other purposes. These rights must be protected to the maximum extent practicable while allowing for the development of this project. As such, SCRO is reserving the right to grant other authorizations to the subject area consistent with the Public Trust Doctrine.

Agency Review:

An agency review was conducted on November 1, 2017. The deadline for agency comments was November 21, 2017.

The following agencies were included in the review:

- DNR DMLW - Mining
- DNR DMLW - Water
- DNR Office of History and Archaeology/State Historic Preservation Office
- DNR Land Sales
- DNR Realty Services
- DNR Division of Oil and Gas
- Department of Fish and Game - Habitat
- Department of Fish and Game - Wildlife Conservation
- Department of Environmental Conservation
- Department of Transportation and Public Facilities
- DNR DPOR
- Alaska Department of Commerce, Community and Economic Development/Regional Affairs
- Environmental Protection Agency (EPA)
- National Oceanic and Atmospheric Administration
- US Army Corp of Engineers
- US Coast Guard
- US Fish and Wildlife Service
- City of Aleknagik

DPOR comment:

As the site is within the State Parks waters of Lake Aleknagik, they request a more detailed list of activities that will be occurring on the dock.

SCRO Response:

SCRO requested more information from Moody's, who responded by email on November 11, 2017:

"In general, as listed in para 3.0 of the application, primarily we would like to use the dock to complement our customers' needs for fuel and supplies. Our customers include Tikchik Narrows Lodge, Golden Horn (Mikchalk Lake) Lodge, Royal Coachman Lodge, GCI Lodge, Bristol Bay Lodge, Bearclaw Lodge, Fishing Bear Lodge, and Aleknagik Island Lodge. To date, we have been able to meet most of their needs without the use of our dock. However, GCI Lodge has requested the occasional use of the dock for refueling their helicopter. We have the ability to refuel them on the dock.

Additionally, future plans call for putting a summer float around parts of the dock to provide more parking areas for aircraft and boats.

The warehouse could support a summer general marina store, a restaurant, and/or a boat/kayak storage area.

Regarding using the dock for helicopter landings, this could be accomplished this summer without financial burden on the company. The other items would most likely require more time before implementing.”

Lease Discussion:

Roland Moody dba Moody's Marina, submitted a lease application proposing the continued use of a .76 acre parcel of State shoreland located 15 miles outside of Dillingham at the end of Aleknagik Road and across the lake. The marina includes a dock and a warehouse (built 1913 and originally from Creek Cannery) used as a workshop, storage area, and has the potential as a general store. The community uses the dock as a landing for fueling, tie off area for fishing vessels and barges, and to support various other commercial and non-commercial interests. Moody's proposes to use the site for the continuing use and maintenance of the existing marina.

Mr. Moody lived on the property since 1931 when his family moved to Lake Aleknagik. In 1964, Mr. Moody moved the warehouse to its current location on a wooden barge from Clark Point to the shoreline in front of the uplands he owns. At around the same time, he positioned three other barges on the shoreline to form a dock.

On March 14, 1995, the State of Alaska received an application for Purchase or Lease of State Land from Roland Moody requesting to purchase or lease the site for 55 years. The State, after discussing the length of the lease term with the customer, reduced the length of the lease to 30 years. Roland Moody completed an ASLS No. 2008-10 in 2011 but did not submit other required deliverables to complete the lease process. Roland Moody sold the uplands and dock to John Bjerke on September 5, 2011 and on May 29, 2014, ADL 226542 was placed in trespass due to nonperformance in the lease process. On January 1, 2017, Jim Baumgartner dba Moody's Marina purchased the uplands and lease site and submitted a new lease application.

Under AS 38.05.075(c) as the upland owner of a property fronting shorelands, Moody's is eligible for a non-competitive lease of the shoreland and submerged lands.

The proposed lease will be subject to the terms of SCRO's standard lease document (available for review upon request) and any Stipulations based, in part, upon the following considerations.

Development Plan:

The Development Plan (DP) attached to this decision (Attachment A) and dated January 1, 2017 is under consideration by SCRO. Should the proposed lease be granted, it is anticipated that the DP will need to be updated throughout the life of the lease as activities and/or infrastructure are added or subtracted. All updates must be approved, in writing, by 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.

Hazardous Materials and Potential Contaminants:

There are no current plans to store hazardous materials or contaminants on the lease site. If plans change in the future Moody's will submit an amendment to lease for review.

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 leasehold and disposed of in accordance with state and federal law.

Moody's does have an approved EPA Spill Response Plan for the upland refueling business.

Lease Performance Guaranty (bonding):

In accordance with AS 38.05.035, AS 38.05.860, and 11 AAC 96.060(a) Performance Guaranty, Moody's already submitted a performance guaranty for the leasehold.

- **\$6,750.00 Performance Bond:** This bond will remain in place for the life of the proposed 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 ensure the Moody'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, reappraisals, changes in the DP, 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 noncompliance issues during the term of the lease or near the end of the life of the project.

Insurance:

In accordance with 11 AAC 96.065 Insurance, Moody's will be required to submit proof of liability insurance to SCRO, with the State of Alaska listed as a "NAMED" insured party. Moody's will be responsible for maintaining such insurance throughout the term of the lease.

Survey:

There is an existing survey of the leasehold, ASLS No. 2008-10. The State of Alaska reserves the right to require an additional survey in the future, should the need arise due to changes in statutes or increased use of the area.

Compensation and Appraisal:

A Minimum Rent Determination for this leasehold was completed on February 5, 2018. In accordance with AS 38.05.840(b), Moody's will not be required to provide an appraisal for this leasehold before lease issuance, and the proposed lease annual fee will be **\$1,920.00**. Furthermore, in accordance with AS 38.05.105, the proposed lease will be subject to reappraisal at five-year intervals after the issuance of the proposed authorization.

If the applicant does not agree with the fee schedule amount of \$1,920.00, a fair market value determination can be obtained by the applicant. Fair market value is determined by obtaining a DNR approved appraisal of the lease. If an appraisal is conducted to determine fair market value of the leasehold, the applicant will be required to pay the appraised amount. The fee schedule rental amount option will no longer be available at that time. The appraisal cost will be incurred by the applicant.

As Moody's has been operating the site since purchased January 1, 2017, with the knowledge that a lease is required, Moody's will be required to pay back fees at \$1,920.00 per year totaling \$3,840.00.

Subleasing:

Subleasing is permissible through AS 38.05.095, if the proposed lease is approved. All potential subleases must first be approved in writing by SCRO. Depending on the activity of any potential subleases, SCRO is reserving the right to reevaluate the need for further agency review and/or public notice before deciding on the appropriateness of the proposed sublease. Sublease compensation to the State will be determined by SCRO according to AS 38.05.073(m), under the authority of AS 38.05.075(a) Leasing Procedures. In any case, the sublease fee for commercial activities will not be less than 25% of the annual fee paid to Moody's by the sublessee.

Assignment of Lease:

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

Reclamation:

In accordance with AS 38.05.090(b), all lessees must restore their leasehold to a "good and marketable condition" within 120 days after the termination of their leases. What level of reclamation constitutes as being "good and marketable" is at the discretion of SCRO.

Public Notice of the Preliminary Decision:

Pursuant to AS 38.05.945, this PD will be advertised for 30-day public comment period. Notice will be posted on the Alaska Online Public Notice System at <http://aws.state.ak.us/OnlinePublicNotices/Default.aspx> and the post offices located in Aleknigik, Manokotak and Dillingham. Courtesy notices will also be mailed or emailed to neighboring property owners, permit/lease holders, and other interested parties on October 17, 2018 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 considered in the FFD. Only those who comment and the applicant have the right to appeal the FFD.

**Written comments about this project must be received in this office no later than
5:00 PM on November 16, 2018 to be considered.**

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

Postal: Department of Natural Resources
Division of Mining, Land and Water
Southcentral Region Office
ATTN: John Cotenass
550 West 7th Avenue, Suite 900C
Anchorage, AK 99501-3577
Email: john.cotenass@alaska.gov
Fax: (907) 269-8913

Questions about the lease portion of this project can be directed to John Cotenass at (907) 269-8479.

If public comments result in significant changes to the Preliminary Decision, additional public notice will 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).

Recommendation:

DMLW 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. SCRO considered three criteria to determine if this project provided the best interest to the State and the development and enjoyment of its natural resources. The criteria include direct economic benefit to the State, indirect economic benefit to the State, and encouragement of the development of the State's resources. This authorization provides a direct economic benefit to the State with the collection of the annual fee for ADL 226542 and an indirect economic benefit through the encouragement and development of State's resources. The authorization of this lease is in the State's best interest as it will continue to provide development and access to rural Alaska communities, support the local fishing community and will remove a structure from trespass. It is recommended that SCRO issue a 20-year lease to Moody's.



John Cotenas, Natural Resource Specialist II

9 26 18

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 pursuant to AS 38.05.070(c), a lease for 20 years to Moody's for .76 acres of State-owned shoreland, as described above. The annual rent will be \$1,920.00, and Moody's will be required to pay back fees of \$3,840.00, and a performance bond in the amount of \$6,750.00 which will remain in place for the life of the lease, as well as proof of insurance. This application shall now proceed to public notice.



Clark Cox, Regional Manager

Southcentral Regional Office, Division of Mining, Land and Water

10-12-18

Date

Attachments

Attachment A – Development Plan

Attachment B – Location Map



Attachment A Development Plan

**DEVELOPMENT PLAN
Moody's Marina, LLC
P. O. Box 133
Aleknagik, Alaska
99555**

**Prepared by James Baumgartner
Gen. Manager
Moody's Marina LLC**

Jan 1, 2017



Attachment A Development Plan

Development Plan

Table of Contents

1.0	General Information.....	3
2.0	Site Description.....	3
3.0	Land Lease Objectives.....	4
4.0	Storage of Hazardous Materials.....	4
5.0	Upgrades and Maintenance Activities.....	5
6.0	Lease Period.....	5
Appendix A	Site Maps	
	Site Drawing	
	Statement of ownership of dock/building	

Attachment A

Development Plan

1.0 General Information

This development plan has been produced to meet State of Alaska Department of Natural Resources (DNR) guidelines on leasing State land. The process of obtaining this lease started on or before March 7, 1995 with the filing of an Application for purchase or lease of state land and receipt of file #226542 from the DNR. In June of 1995 a Final Consistency Finding was issued by the Division of Governmental Coordination (DGC). In July of 1995, a U.S. Army Corps of Engineers (COE) Section 404 Permit #4-950126 was issued for construction.

Having obtained the above permits for construction and having filed the application for purchase or lease, the owner at that time, Roland Moody, moved forward with the project as planned. The dock bulkheads were installed and gravel was placed inside to create the dock as it exists today. Construction was completed by October of 1995.

On September, 2011 the uplands and the improvements of the dock/building were sold to John Bjerke. Attachment A is John Bjerke statement regarding this sale

Since the lease process had not been completed between Roland Moody and the DNR, it fell upon Mr. Bjerke's responsibility to finish the lease application process with DNR.

Mr. Bjerke's financial misfortunes shortly after buying the property prevented him from pursuing the lease and in 2014, the site was deemed a 'no trespass' site by DNR.

Moody's Marina, LLC has recently purchased the property from John Bjerke, effective Jan 1, 2017 and is now applying to clear the trespass so the dock can serve the local needs to have a marina.

2.0 Site Description

Moody's Marina, LLC is located in the second class city of Aleknagik which is approximately 15 miles outside of Dillingham at the end of the Aleknagik Lake road. The city of Aleknagik is located at approximately 59 degrees 16'42" N latitude and 158 degrees 37' 23"W longitude.

Moody's Marina LLC owns Lot 1, 2, and 3, Block 7, Tract A, US Survey No 4873 in the Townsite of Lake Aleknagik in the Bristol Bay Recording District. Lot 3 is the upland property to the dock/building of concern on the shoreline of Lake Aleknagik.

Aleknagik is in a transitional climate zone. The primary influence is maritime, although a continental climate does affect the weather here. Average summer temperatures range from 30 to 66 °F (-1 to 19 °C). Average winter temperatures range from 4 to 30 °F (-16

Attachment A

Development Plan

to -1 °C). Annual precipitation is 20 to 35 inches (510 to 890 mm) and annual snowfall is 93 inches (240 cm). Fog and low clouds are common during July and August, and may preclude access. The lake and river are ice-free from June through mid-November. General area and site maps can be found in Appendix A.

The site soils generally consist of poorly graded gravels and sands typical of Aleknagik Lake beaches. The poorly graded soils have a high porosity and thus drain well. Water does not accumulate or sheet through the site. Groundwater at the site can best be determined by gauging the lake elevation since the site is in close proximity to the lake. Being a lake with minimal tidal influence, the shoreline elevation does not change and thus all measurements are referenced as ordinary high water level.

The proposed lease area includes the dock facility, and operational areas in and around the dock which would be used for normal business operations such as temporary boat mooring activities. An area of approximately 100' x 150' is being requested to support the land lease objectives.

3.0 Land Lease Objectives

This project will support the following activities:

- Housing the 1913 Creek Cannery wooden building (60' x 30') on the dock that many of the Aleknagik residents feel is of historical significance.
- Providing a community dock for the local residents.
- Moody's Marina LLC to use the dock to support the needs of the local commercial and non commercial marine and fishing lodge operations.
- The dock has potential for use as a general marina store, restaurant or boat/kayak leasing operations for tourist, etc.
- To compliment the ongoing fueling operation near the dock.

4.0 Storage of Hazardous Materials

There are no hazardous materials, trash, bio-waste stored on site and no immediate plans to store any. Should the need for storing or handling any hazardous materials, etc. on or across the site, prior notification to the DNR will be made to satisfy any needs for environmental protection and clean up. Moody's Marina LLC has an approved EPA Spill Response Plan (SPCC) for the fueling business which is near the dock that would be made available as an added measure of safety. In addition, there is no electricity hooked up to the dock/building.

Attachment A Development Plan

5.0 Upgrades and Maintenance Activities

As with any facility, the need to upgrade and maintain is continually under consideration. Upkeep and maintenance activities for the dock/building can best be served upon removal of the 'no trespass'.

The maintenance activities would include: an annual inspection of the wooden bulkhead, steel piles, and gravel fill for damage or wear. If required, timbers, piles and gravel would be repaired or replaced to maintain the strength and appearance of the dock structure.

6.0 Lease Period

The lease period for the land which the dock is placed on was originally requested, on the application, for 55 years with a written request to outright purchase of the property. Since a purchase option is not available and since the dock has already been in place for 21 years, Moody's Marina LLC request a 20 year lease period.

Attachment A Development Plan

Print Preview

Page 1 of 1



Attachment A

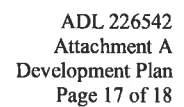
http://www.bristolbayonline.com/tools/printadvanced/print_preview_landscape.asp

8/21/2006

[illegible]

Attachment A

ATTACHMENT A
ADL 226542



Attachment B
Location Map

