

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

Southeast Regional Office

**Preliminary Decision**

**ADL 108036**

**Daniel Smith**

Application for Lease

AS 38.05.075(C)

**Executive Summary**

This document represents a preliminary decision to issue a 10-year lease to Daniel Smith (“applicant”) for an existing ramp, float, and storage shed near Coffman Cove, Alaska. The improvements will be for personal recreation and to access the applicant’s upland property. The state intends to authorize the proposed lease, contingent upon the responses received during the public notification period and the evaluation of the state’s interest, contained herein.

**Requested Action**

Daniel Smith originally applied for a commercial lease on June 25, 2010, to authorize a ramp, float, and shed adjacent to his upland property in Coffman Cove, Alaska. However, commercial activities have not taken place since 2011.

The lease request is for continued use of an existing ramp, float and shed for personal recreation and to access the applicant’s upland property. A development diagram is included as Attachment 1.

**Existing Improvements:**

- Ramp. Aluminum construction, approximately 408 sq. ft.;
- Float, wood construction, approximately 1500 sq. ft.;
- Storage shed, wood/metal construction, approximately 80 sq. ft.;
- Four steel pilings (16 in. dia.)

The total area requested by the applicant is approximately 0.15 acres. Final acreage will be determined by an approved diagram of the leasehold.

**Proposed Action**

The Division of Mining, Land & Water (DMLW) proposes to issue a 10-year lease to the applicant to authorize a ramp, float, and shed for personal use.

**Scope of Decision**

The scope of this decision is limited to the determination of whether it is in the State’s best interest to issue a 10-year lease to the applicant. The administrative review for this authorization is defined by AS 38.05.035(e)(1)–(2) and 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 that are material to the determination.

### **Authority**

This lease application is adjudicated pursuant to AS 38.05.035(b)(1) and AS 38.05.035(e) Powers and Duties of the Director, AS 38.05.070 Generally, AS 38.05.075 Leasing Procedures, and AS 38.05.945 Notice. The authority to execute the Preliminary Decision, Final Finding and Decision (FFD), Entry Authorization (EA), and the lease has been delegated to the regional managers of the DMLW.

### **Administrative Record**

The administrative record for the proposed action consists of the Constitution of the State of Alaska, the Alaska Land Act as amended, applicable statutes and regulations referenced here-in, the Prince of Wales Island Area Plan, October 1998 (POWIAP), and other classification references described herein, and the casefile for the application serialized by DNR as ADL 108036.

### **Location Information**

#### **Geographic Location**

The site is near Prince of Wales Island on state tide and submerged land in Coffman Cove, Alaska, a navigable body of water adjacent to Kashevarof Passage and Clarence Strait.

#### **Property Description**

The proposed lease is located within Section 35, Township 67 South, Range 81 East, Copper River Meridian and more particularly located seaward and adjacent to Lot 9, Block 3, Coffman Cove Subdivision. The proposed leasehold contains approximately 0.15 acres more or less.

#### **Other Land Information**

Municipality: City of Coffman Cove

Regional Corporation: Sealaska Corporation

Village Corporation: None

Federally Recognized Tribe: None

Approximate Coordinate Location: 56.0178° N, 132.8486° W (WGS84)

### **Title**

A DNR Title Report (RPT 20504) issued on December 11, 2019, from the DMLW's Realty Services Section attests the State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying Coffman Cove in the section(s) referenced above, on the basis of the Equal Footing Doctrine, the Submerged Lands Act of 1953 and AS 38.04.062 (Identification of State Submerged Lands).

Title is subject to valid existing rights, including reservations, easements, and exceptions in the U.S. Patent or other State or federal conveyance, and in acts authorizing the issue thereof, easements, rights-of-way, covenants, conditions, reservations, notes on the plat, and restrictions of record, if any.

### **Adjacent Landowners**

State of Alaska; one neighboring upland owner. Adjacent landowners will be notified of this decision.

### **Third Party Interests**

City of Coffman Cove. Third Party interests will be notified of this decision.

### **Planning and Classification**

State land in the proposed subject area is managed in accordance with policies outlined in the POWIAP is located within Management Unit 6a. According to the management intent of this subunit, "State Lands in this subunit will be managed for multiple use, with an emphasis on meeting the needs of the developing community of Coffman Cove for community expansion and to support the economic base of this community through use of the commercial forest resources." The designated land uses for the area are Shoreline Development (d), Crucial Habitat (Ha), and Dispersed Recreation (r), which convert to Settlement Land, Wildlife Habitat Land, and Public Recreation Land as the land classifications. According to 11 AAC 55.202, "An upland area classified settlement is land that is, by reason of its physical qualities and location, suitable for year-round or seasonal residential or private recreational use or for commercial or industrial development." The proposed use matches this classification.

The ramp, float, and shed have been in place for years with no conflict. Since the residential use of the improvements will help meet the needs of the developing community of Coffman Cove, and the proposed use is a primary designated use, it is consistent with the management intent of the POWIAP. Additionally, the proposed use of this area will not prohibit the public from accessing the available resources and will likely have no negative impact to fish and wildlife or the surrounding habitat.

### **Traditional Use Finding**

Pursuant to AS 38.05.830, and after due consideration, we find that the proposed lease is likely to have little or no effect on the density of the population in the immediate vicinity and that there is little potential for conflict with the known traditional uses of the land. If we are provided information that clearly demonstrates the lease and the associated development and use have the potential to adversely impact traditional uses, we will, in the Final Finding and Decision, address the potential impacts and present mitigation measures that will either minimize or avoid impacts to traditional uses.

**Access**

The physical and legal access to the proposed lease site is via tide and submerged lands associated with Coffman Cove, a navigable body of water. The site can also be accessed by the adjacent uplands, which are owned by the applicant.

**Access Along Public Waters**

The site is located in Coffman Cove. Pursuant to AS 38.05.126(a), the public has a constitutional right to free access to, and use of, navigable or public waters of the State of Alaska. Under 11 AAC 51.045 and AS 38.05.127, the DMLW is required to reserve specific public-access easements to and along these waters. Unless comments and other information submitted to the DMLW provide justifiable and convincing evidence to do otherwise, this disposal of state interest will be subject to a 50-foot public access easement seaward and landward of the line of mean high water.

**Public Trust Doctrine**

Pursuant to AS 38.05.126, 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, the DMLW is reserving the right to grant other authorizations to the subject area consistent with the Public Trust Doctrine.

**Reservation of Mineral Estate**

In accordance with section 6(i) of the Alaska Statehood Act and AS 38.05.125, the state, in this decision, reserves unto itself the mineral estate, including oil and gas, and the rights expressed in the reservation clause of the statute, that being the right to reasonable access to the surface for purposes of exploring for, developing and producing the reserved mineral resources. Exploration and development, if any, which could occur, would be consistent with AS 38.05.130 and other applicable statutes and regulations.

**Mineral Orders**

The proposed leasehold does not fall within the areas delineated in Administrative Mineral Closing Order (MCO) No. 739 (POWIAP, Appendix C). Neither an MCO nor a leasehold location order is necessary or appropriate for this proposed lease.

**Agency Review**

An agency review was conducted on November 22, 2019. The deadline for agency comments was December 23, 2019. The following agencies were included in the review:

- ADF&G – Wildlife Cons.
- ADF&G – Habitat Division
- DEC – Commissioners Office
- DEC – Water Plan Review Section Manager

- DNR DMLW OHA – Review & Compliance
- DOT&PF – Statewide ROW Chief

### **Agency Review Comment and Response**

No comments were received.

### **Background**

- February 17, 2010-Tresspass case opened for unauthorized use of state-owned land.
- June 25, 2010-The DMLW received an application for a lease to authorize the existing improvements.

### **Discussion**

The improvements have been in place for years with no conflict and are used for personal recreation and access to the applicant's property. The proposed activity is consistent with the POWIAP, and the impacts of the proposed activity on natural resources at the site are expected to be minimal. Additionally, the use of these improvements will help sustain the growing community of Coffman Cove. Given these considerations, the DMLW finds the proposed lease to be in the best interest of the state.

The lease shall be subject to the standard DMLW Lease Agreement (form 102-111, re-vised May 2001), Special Stipulations and the terms and conditions set forth therein (Attachment 2).

### **Development Plan**

The development plan attached to this decision (Attachment 1) is under consideration by the DMLW. Should the proposed lease be granted, it is anticipated that the development plan 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 the DMLW before any construction, deconstruction, replacement of infrastructure, or change in activity will be authorized. The DMLW reserves the right to require additional agency review and/or public notice for changes that are deemed by the DMLW to be beyond the scope of this decision.

### **Entry Authorization**

Pursuant to AS 38.05.075(f), DNR-DMLW will authorize the applicant entry onto state land through the issuance of an Entry Authorization (EA) to provide the required as-built diagram, described in the Survey section below. The proposed EA is for a term of three years and would be issued after the Final Decision becomes effective. Once the conditions of the EA are met, the lease will be issued. The total lease term is inclusive of the term of the EA.

### **Performance Guaranty**

In accordance with AS 38.05.035, AS 38.05.860, and 11 AAC 96.060(a) Performance Guaranty, the applicant will be required to submit performance guaranties for the lease to incentivize performance of the conditions of the EA and the lease. This provides a mechanism for the state to ensure that the lessee shares any financial costs associated with noncompliance of the lease

agreement for site cleanup, restoration, and any associated costs after termination or expiration of the leases. The following bonds will be required:

#### **\$4,000 Performance Bond**

Performance guaranties provide a means to pay for corrective action if the lessee fails to comply with the lease requirements. In accordance with AS 38.05.035(a)(4), the applicant will be required to submit a performance guaranty. 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. Performance guaranties are subject to periodic adjustments 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**

Per Condition #24 of the lease document, the applicant shall secure or purchase at its own expense, and maintain in force at all times during the term of this lease, the following policies of insurance to protect both themselves and the State of Alaska (officers, agents and employees):

#### **Commercial General Liability Insurance Policy**

The policy shall have minimum coverage limits of no less than \$1,000,000 combined single limit per occurrence.

If the applicant's policy contains higher limits, the State of Alaska shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to us prior to the issuance of this lease and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. The applicant must provide a 30-day prior notice to the State of Alaska before the applicant cancels, does not renew, or makes any material changes to the conditions of the policy. Failure to furnish satisfactory evidence of insurance, or lapse of the policy, is a material breach of this lease and shall be grounds, at the option of the State of Alaska, for termination of the lease.

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 108036.

#### **Survey**

In accordance with AS 38.04.045, this 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. The applicant will be required to submit a scaled diagram with GPS coordinate points for all leasehold corners. Remittance of an approved diagram will be required before the lease may be issued.

### **Appraisal**

As provided by AS 38.05.840(b), the applicant is not required to provide a fair market value appraisal to determine the initial lease compensation. Based on a Minimum Rent Determination Appraisal from the DMLW Appraisals Unit, the compensation will be the minimum required by 11 AAC 58.410.

### **Compensation**

#### **Annual Land Use Fees**

Pursuant to 11 AAC 58.410(b), AS 38.05.075(f) and AS 38.05.840(b), the annual land use fee will be \$500.

#### **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**

The applicant used the ramp, float, and shed on state-owned land prior to securing authorization. If it is decided that a lease will be issued, the annual land use fee of \$5,000 (\$500 per year for 10 years) will be charged for the duration of unauthorized activity and payment of these fees will be due as a deliverable for Entry Authorization issuance.

### **Subleases**

Subleasing may be permissible through AS 38.05.095, if the proposed lease is approved. All potential subleases must first be approved in writing by the DMLW. The DMLW may conduct further agency review and/or public notice before making a determination on the appropriateness of the proposed sublease. The sublease fee will not be less than 25% of the annual fee paid to the lessee by the sublessee.

### **Reclamation**

In accordance with AS 38.05.090, the leasehold must be restored to a "good and marketable condition" as determined by the DMLW within 120 days after termination of the lease.

### **Public Notice**

Pursuant to AS 38.05.945, this preliminary decision will be advertised for a 30-day public comment period. In addition, the post office(s) located near the proposed leasehold will be requested to post the notice pursuant to AS 38.05.945(b)(3)(C). The notice will also be posted on the State of Alaska Online Public Notice website pursuant to AS 38.05.945(b)(3)(B) located at: <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx>. In accordance with AS 38.05.946, a

municipality or a corporation entitled to receive notice under AS 38.05.945(c) may hold a hearing within 30 days after the receipt of the notice.

### **Comments**

The public is invited to comment on this preliminary decision. All comments received during the public comment period will be considered in the FFD. If public comments result in significant changes to the preliminary decision, additional public notice may be given. A copy of the FFD, along with instructions on filing an appeal, will be sent to all persons who comment on the preliminary decision. To be eligible to appeal, a person affected by the FFD must provide written comments during the public comment period per AS 38.05.035(i).

**Written comments about this project must be received in this office no later than  
5:00 PM on \_\_\_\_\_ to be considered.**

To submit comments please choose one of the following methods:

Mail: Department of Natural Resources  
Division of Mining, Land and Water  
Southeast Region Office  
ATTN: Jacob Hall  
400 Willoughby Ave., Suite 400  
Anchorage, AK 99811-1020  
Email: jacob.hall@alaska.gov  
Fax: (907) 500-9011

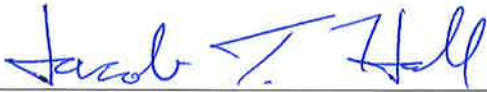
Questions about the lease portion of this project can be directed to Jacob Hall at (907) 465-3402.

***Signature page follows:***



**Adjudicator Recommendation**

Based on the information provided by the applicant and other agencies, as well as review of planning documents, statutes, and regulations, I recommend approving a 10-year lease to the applicant authorizing the personal use of an existing ramp, float, and shed. I recommend proceeding to public notice for the purpose of providing the members of the public and those entities identified in AS 38.05.945 an opportunity to review and submit comments.



Jacob Hall, Natural Resources Specialist II



Date

Unit Manager Concurrence



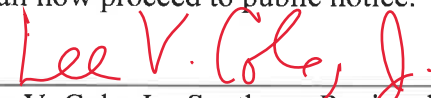
Ryan Wilson, Natural Resources Manager I



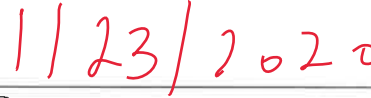
Date

**Preliminary Decision**

It is the determination of the Division of Mining, Land & Water that it may be in the State's best interest to issue a 10-year lease to the applicant, as described above. This preliminary decision shall now proceed to public notice.



Lee V. Cole, Jr., Southeast Regional Manager



Date

**ATTACHMENTS:**

Attachment 1. Development Plan

Attachment 2. Standard Lease Agreement and Special Stipulations

Attachment 3. Entry Authorization