

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

Southeast Regional Land Office

## Preliminary Decision

ADL 108979

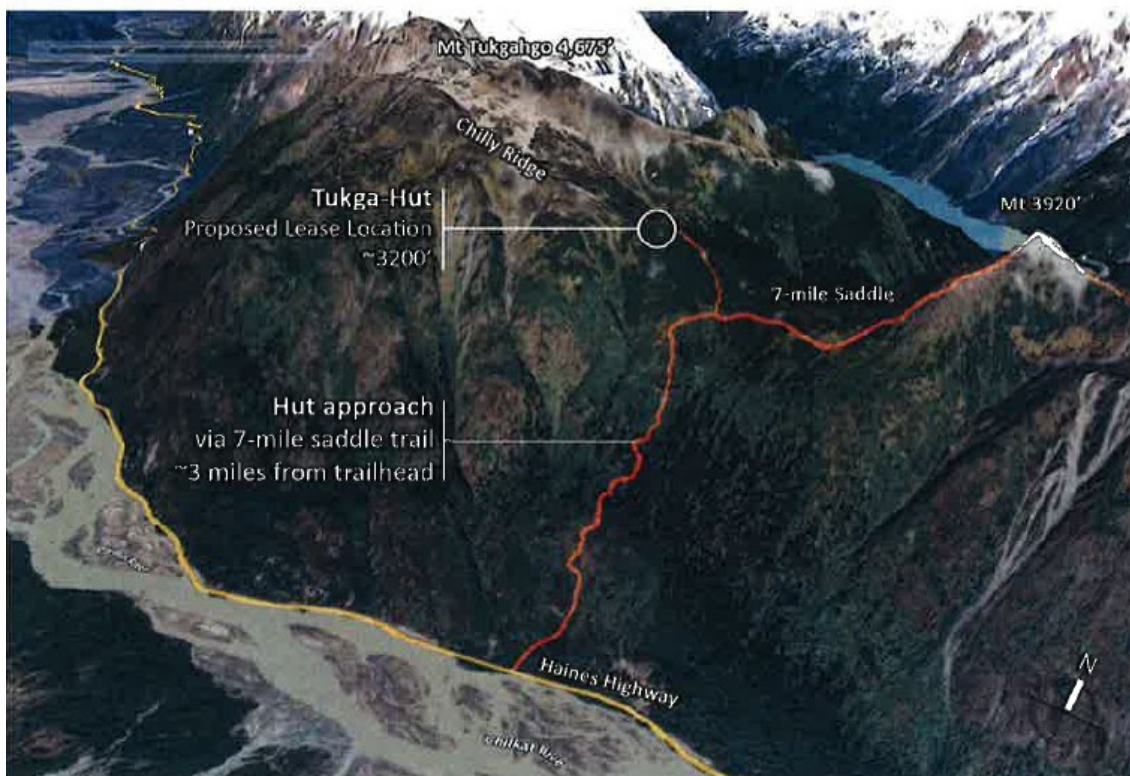
## Haines Huts and Trails

Lease Amendment

AS 38.05.810

### Executive Summary

This Preliminary Decision (PD) is the State's preliminary best interest finding regarding a proposed disposal of interest in state land. Haines Huts and Trails applied for a lease amendment during the term of their originally issued Entry Authorization to change their leasehold location. The State intends to authorize this lease amendment, contingent on comments received during public notice and the best interest finding contained herein. The public is invited to comment on this PD. The deadline for commenting is 5:00 pm October 3rd, 2022. Please see the Public Notice section of this decision for requirements related to submitting comments for consideration. Only the applicant and those who comment have the right to appeal the Final Finding and Decision (FFD).



### **Requested Action**

Haines Huts and Trails (“applicant”) was issued an Entry Authorization on December 9<sup>th</sup>, 2019, to lease approximately 2,000 square feet of land for the purposes of constructing a 16-foot by 20-foot backcountry cabin and a 4-foot by 4-foot outhouse on the south flanks of Mt. Tukgahgo, near Haines, Alaska. The purpose of the lease is to establish and operate a public use backcountry cabin and outhouse facility for the Haines community. On December 2<sup>nd</sup>, 2021, the applicant submitted an application requesting to amend their lease to change the location of the lease site to an area further down Mt. Tukgahgo. The reason for the location change is because the original lease site was located in sensitive goat habitat. The applicant selected the new location to reduce potential impacts to wildlife. The applicant requested a 55-year lease. A development diagram is included as Attachment 1.

### **Proposed Improvements:**

- (1) 16-foot by 20-foot timber backcountry hut containing approximately 320 square feet.
- (1) 4-foot by 4-foot outhouse containing approximately 16 square feet.

The total area requested by the applicant is approximately 2.6 acres.

### **Proposed Action**

The Division of Mining, Land & Water (DMLW) proposes to issue a 10-year public and charitable lease to the applicant for the construction, operation, and maintenance of the cabin and outhouse facilities, as outlined in the applicant’s lease development plan (Attachment 1).

### **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 public and charitable 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 38.05.810 Public and Charitable Use and AS 38.05.945 Notice. The authority to execute the PD, Final Finding and Decision (FFD), and the lease has been delegated to the Regional Managers of 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 Haines State Forest Management Plan (HSFMP, 2002) and other classification references described herein, and the casefile for the application serialized by DNR as ADL 108979.

**Location Information****Geographic Location:**

The proposed site is located at an elevation of 3,200 feet on the south flanks of Mt. Tukgahgo, approximately 8 miles from downtown Haines.

**Property Description:**

The proposed lease is located within Section 11, Township 30 South, Range 58 East, Copper River Meridian.

**Other Land Information:**

Municipality: Haines

Regional Corporation: Sealaska Corporation

Village Corporation: N/A

Federally Recognized Tribe: Chilkat Indian Village and Chilkoot Indian Association

Approximate Leasehold Corners Coordinate Location:

- 59°17'6.60"N, 135°36'20.53"W
- 59°17'8.08"N, 135°36'21.09"W
- 59°17'7.09"N, 135°36'3.82"W
- 59°17'5.96"N, 135°36'4.27"W

**Title**

The State of Alaska received tentative approval for the lands from the United States Department of the Interior in 1980 under General Grant GS-1540. This tentative approval was recorded in 2012 under document number 2012-0000278-0.

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**

The site is located entirely within the Haines State Forest and is surrounded by state-owned land.

**Third Party Interests**

Non-identified.

**Planning and Classification**

The proposed lease is consistent with the 2002 HSFMP. Located in Management Unit 8 Subunit 8d, Resource Management Land is the land classification (HSFMP, 3-64).

**Management Intent:** "Subunit 8d will be managed for its scenic, recreational, wildlife habitat, and potential mineral values under a land classification of Resource Management to represent the diversity of resources. There are approximately 224 acres of operable commercial timber in this

unit. Because of the remote, mountainous location of this subunit, development is not anticipated or considered appropriate. If authorizations are granted by the Department, the general standards of Chapter 2 apply except for the specific requirements of a special use designation prohibiting motorized uses in certain parts of the subunit,” (HSFMP, 3-65).

Chapter 2 of the HSFMP establishes the forest-wide management policies the Department must consider. “Recreation” is the most pertinent and applicable section relevant to this the applicant’s requested use of state land:

**Chapter 2 Guidelines – Recreation; Public Use Cabins and Trails:** “A system of public use cabins and trails should be established in the State Forest, subject to the availability of funding. Public use cabins and trails may be constructed where analysis indicates a need, and where the state, federal, or local government, or local non-profit organizations are able to construct and maintain the facilities. The Division of Forestry, Division of Parks and Outdoor Recreation and Department of Fish and Game shall closely coordinate the establishment of any public use cabin site or trail [...] Public use cabins will be sited to avoid conflicts with existing or planned resource uses such as timber or mineral development,” (HSFMP, 2-25).

While development in this subunit was not considered appropriate in 2002 when the HSFMP was created, the demand for public use cabins was clearly foreseen and anticipated. The level of disturbance to the landscape and ecosystem from the construction of the cabin and outhouse proposed in the application is minimal: the cabin and outhouse comprise a small square footage and the facilities are designed to be dismantled in one weekend. Additionally, all cabin users are required to adhere to leave no trace practices.

Special Use Designation ADL 106929 (Appendix B), “prohibits the use of motorized vehicles in the area of Mt. Ripinski north to Seven Mile Saddle [...] this designation also affects [...] subunit 8d,” (HSFMP, 3-52).

With the appropriate stipulations in place, the proposed lease is consistent with the classification and management intent of the Haines State Forest Management Plan.

### **Traditional Use Finding**

This finding is not required since the proposed leasehold is located within an organized borough (AS 38.05.830). The Borough will be notified of this Preliminary Decision.

### **Access**

The 2019 Preliminary Decision for ADL 108979 noted issues with legal access. While there are several trailheads that may be used to connect to a trail system providing physical access to the

requested lease area, the trailheads did not provide legal access because they either began on private land or lands not managed by DMLW/DOF (i.e., Mental Health Trust and University of Alaska lands). The original PD stated that it was the applicant's responsibility to establish legal access to their lease site (via one of the existing trailheads) during the Entry Authorization (EA) period by working with pertinent stakeholders/landowners for permission or authorization.

The applicant has since clarified in this amendment request that the primary route to the leasehold will be via 7 Mile Saddle Trail. This trail bisects land owned by the University and Mental Health Trust (MHT) near Mile 7 of the Haines Highway. On May 17<sup>th</sup>, 2022, the applicant obtained a letter of non-objection and support for the proposed lease from the University of Alaska<sup>1</sup>. The applicant also supplied DMLW with proof of a public, non-exclusive trail use agreement between the Haines Borough and MHT for use of 7 Mile Saddle Trail<sup>2</sup>.

As noted above, the site is also subject to Special Land Use Designation, ADL 109269. This designation prohibits motorized access within certain portions of Subunit 8d.

### **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 an Administrative Mineral Closing Order (MCO). Neither an MCO nor a leasehold location order is necessary or appropriate for this lease.

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

Hazardous materials, specifically a 250-gallon propane tank for cooking and heat will be stored within the proposed leasehold. Stipulations will be included in the lease to ensure proper handling and storage. 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.

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<sup>1</sup> Letter from Adrienne Stolpe, Director of UA Land Management. May 17<sup>th</sup>, 2022.

<sup>2</sup> Revocable License for Land Use, MHT 9100994 (Mental Health Trust and Haines Borough)

The applicant will also store human waste in a 55-gallon drum within the outhouse. The drums will be removed annually via helicopter and disposed of according to state and local regulations at the Haines Borough sewer treatment facility.

### **Agency Review**

An agency review was conducted on March 4<sup>th</sup>, 2022. The deadline for agency comments was April 4<sup>th</sup>, 2022.

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
- DNR – Division of Forestry
- DNR – Division of Parks and Outdoor Recreation

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

ADF&G Division of Wildlife Conservation Comment: ADF&G does not object to the issuance of the authorization but notes that while the new cabin location makes an attempt to avoid sensitive goat habitat, ADF&G models still predict that the site has a high probability for selection by mountain goats. This location is also near modeled high quality brown bear denning habitat.

To minimize potential impacts to wildlife, ADF&G provided the following recommendations:

- Limit helicopter use to the period of July 16<sup>th</sup> – October 31<sup>st</sup> to avoid the potential for disturbing denning brown bears and mountain goats.
- Helicopter should maintain a minimum distance of 1,500 meters from observed mountain goats.
- Food, fuel, waste, or other potential bear/animal attractants should be properly stored. Any conflicts with wildlife should be reported to the Douglas office of ADF&G at (907) 465-4265 or the Alaska Wildlife Troopers if an emergency occurs.

Lastly, ADF&G notes that the youth mountain goat hunting area (hunting season September 15<sup>th</sup> – November 15<sup>th</sup>, unless closed by emergency order) includes the Takshanuk Ridge from 10-mile to the town of Haines, and the primary access used by

most hunters is the 7 Mile Saddle Trail. Noise from construction activities may displace or alter goat behavior which may cause conflict with hunting user groups.

DMLW Response: The result of the special use designation (ADL 106929) is to preclude the use of personal and commercial motorized vehicles within the designated Mt. Ripinski non-motorized area, as these uses would be otherwise generally allowed on state-owned land. 11 AAC 96.020(D)-(E) outlines what types of vehicles are generally allowed on state land, while 11 AAC 96.020(F) addresses what aircraft and watercraft uses are generally allowed. Thus, a clear distinction is drawn in regulation between vehicles and other modes of transportation, and the Mt. Ripinski non-motorized special use designation only applies to motorized vehicles. However, under 11 AAC 96.025(3)(c), activities that are generally allowed must be conducted in a manner that minimizes disturbance to fish and wildlife resources.

While helicopter use is not a part of this authorization because it is generally allowed and not restricted by the special use designation, the applicant will be advised of ADF&G's recommendations on how to minimize disturbance to wildlife. Additionally, a stipulation will be incorporated in the lease to address the recommendations regarding attractants to wildlife.

To avoid impacts to wildlife and reduce the potential for conflict with hunting user groups, DMLW will require that the applicant avoid construction between September 15<sup>th</sup> and November 15<sup>th</sup>.

DNR Division of Forestry Comment: DOF stated that while the application does not discuss removal of vegetation, the applicant indicated in an email exchange with DOF that vegetation removal could consist of a 26-foot by 30-foot area and 10-foot by 10-foot area for the human waste facility. DOF notes that removing the subalpine vegetation for the development of the cabin could promote adverse impacts to the surrounding vegetation. DOF noted concerns that removing vegetation could lead visitors to continue cutting the vegetation back for fuel once they found that cutting has already occurred. DOF would prefer that the applicant select a specific site that does not require the removal of subalpine forest or shrubs for development.

DOF indicated that the management plan supports dispersed recreation in this subunit and that allowing cabin construction is contrary to the plan guidelines. If authorized, DOF requests that development impacts to wildlife, habitat, and recreational users are as minimal as possible.

DMLW Response: In response to DOF's comment regarding brush and vegetation clearing, DMLW will include the following stipulation in the lease agreement:

Site Disturbance:

- a) Site disturbance shall be kept to a minimum to protect local habitats. All activities at the site shall be conducted in a manner that will minimize the disturbance of soil and vegetation and changes in the character of natural drainage systems. Any ground disturbances that may occur shall be contoured to blend with the natural topography to protect human and wildlife health and safety. Particular attention must be paid to preventing pollution and siltation of any waterways and to preventing disturbances to fish and wildlife populations and habitats.
- b) Brush clearing is allowed only to the extent necessary to maintain the present development. The Lessee may use dead timber that is down. The Lessee shall not cut standing timber within the leased area unless specifically authorized by DNR's Division of Forestry. The removal of vegetation shall be kept to a minimum and areas requiring disturbance should be allowed to revegetate as soon as possible after disturbance. To the extent possible, associated vegetation should be left intact to enhance stability, control erosion and enhance scenic qualities.

As noted in the *Management Intent* section above, development within the subunit was not considered in 2002 when the HSFMP was created. However, the HSFMP clearly acknowledged and anticipated that the demand for public use cabins would grow in the following years. This demonstrated in the HSFMP Chapter 2 Area Guidelines for Recreation, which specifically notes, "a system of public use cabins and trails should be established in the State Forest, subject to the availability of funding. Public use cabins and trails may be constructed where analysis indicates a need, and where the state, federal, or local government, or local non-profit organizations are able to construct and maintain the facilities," (HSFMP, 2-25). The applicant's proposal to construct a cabin and outhouse is consistent with the management plan.

This amendment request is a result of the applicant voluntarily relocating after previously receiving approval for a lease in 2019 in an effort to reduce potential impacts to wildlife and habitat. The impacts to state lands from the proposed activities are de minimis in nature, consist of a small square foot area, and are designed to be dismantled in one week-end.

## **Background**

DMLW received the original application for lease on February 25<sup>th</sup>, 2019. The applicant was issued an EA on December 9<sup>th</sup>, 2019. In November of 2021, DMLW received an application requesting to amend the location of the proposed lease to reduce impacts to wildlife, as the previously authorized lease area was located directly within sensitive mountain goat and brown bear denning habitat. The amendment proposes to move the location of the lease area to the



3,200 foot elevation level (still within the southern flank of Mt. Tukgahgo), which is the subject of this preliminary decision.

### **Discussion**

Haines Huts is a nonprofit corporation seeking to establish several public use cabins in the Haines area. Much of the uplands in Haines are owned and managed by the State.

The mission of Haines Huts is to establish and operate an area hut system that provides reliable backcountry cabins for residents and visitors, with a purpose of providing a place that fosters wilderness education for all ages, a jumping off point for backcountry adventures, and a safe place for emergency situations.

DMLW proposes to issue Haines Huts a 10-year public and charitable lease under AS 38.05.810.

The lease shall be subject to the standard DMLW Lease Agreement, Special Stipulations and the terms and conditions set forth therein (Attachment 2).

### **Development Plan**

The Development Plan (DP) attached to this decision (Attachment 1) and dated November 7<sup>th</sup>, 2021, is under consideration by DMLW. 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 DMLW before any construction, deconstruction, replacement of infrastructure, or change in activity will be authorized. DMLW reserves the right to require additional agency review and/or public notice for changes that are deemed by DMLW to be beyond the scope of this decision.

### **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 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:

#### **\$6,570 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.

The 2019 Final Finding and Decision for ADL 108979 dictated that the applicant submit a Performance Guaranty in the amount of \$6,570. The lease amendment contemplated in this Preliminary Decision makes no changes to the 2019 Performance Guaranty requirement.

### **Insurance**

Consistent with AS 38.05.035(a) to protect the State from liability associated with the use of the site, the applicant shall provide and maintain a comprehensive general liability insurance policy with the State of Alaska named as an additional insured party per the stipulations of the Lease Agreement. The applicant shall secure or purchase at its own expense and maintain in force at all times during the term of this lease, liability coverage and limits consistent with what is professionally recommended as adequate to protect the applicant and the State, its officers, agents and employees from the liability exposures of all the insured's operations on state land. The insurance requirement may be adjusted periodically.

### **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. DMLW reserves the right per AS 38.05.035(a) to require a survey in the future, should conditions arise that warrant a survey. If a survey is required, the applicant will be responsible for the costs of the survey.

### **Compensation and Appraisal**

AS 38.05.810(b-d): DNR is setting the annual fee for the lease at \$0.00, because of the youth encampment fee exemption. Under AS 38.05.097(a) a nonprofit organization using state land leased by it under AS 38.05.810 for a youth encampment or similar recreational purpose is exempt from lease rental payment on that land.

In 2019, Haines Huts submitted a written request for this exemption stating:

*“Haines Huts is a nonprofit organization that provides backcountry cabins for the purpose of providing a place for youth and young adults to participate in outdoor recreation living. Our cabins provide an opportunity for young people to foster personal and social development while experiencing the outdoors. This cabin will be used year-round for youth and young adult outdoor programs and for this reason should qualify for the youth encampment exemption.”*

Given that 11 AAC 58.825 calls to liberally interpret the applicable statutes and regulations in determining the qualifications for a youth encampment fee exemption, DMLW determined that the applicant qualifies for the exemption.

### **Subleases**

Subleasing is permissible through AS 38.05.095, if the proposed leased is approved. As this lease is authorized under AS 38.05.810(b-d) for public and charitable use, the lessee may only sublease to another qualified entity under AS 38.05.810(b-d). No commercial use of the leasehold is allowed under AS 38.05.810(b-d). All potential subleases must first be approved in writing by DMLW. As required by 38.05.095(b), a nonprofit organization that is exempted from paying rent on state land under AS 38.05.810 may not sublease. 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 DMLW within 120 days after termination of the lease.

### **Public Notice**

Pursuant to AS 38.05.945, this PD will be noticed for a 30-day public comment period, starting on September 1st, 2022. 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 PD. All comments received during the public comment period will be considered in the FFD. If public comments result in significant changes to the PD, 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 PD. 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 October 3rd, 2022 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: *Megan Hillgartner*  
400 Willoughby Avenue, 4<sup>th</sup> Floor

PO Box 111020  
Juneau, AK 99811-1020  
Email: megan.hillgartner@alaska.gov  
Fax: (907) 500 - 9011

Questions about the lease portion of this project can be directed to *Megan Hillgartner* at (907) 465-3401.

*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 applicant to construct a backcountry public use cabin and outhouse on the southern flanks of Mt. Tukgahgo. 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.

*Megan Hillgartner* 9/1/2022  
Megan Hillgartner, Natural Resources Manager Date

**Division of Forestry Concurrence**

*Greg Palmieri* 9 - 1 - 2022  
Greg Palmieri, Forester, Haines 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.

*Benjamin M. White* September 1, 2022  
Benjamin White, Southeast Regional Manager Date

**ATTACHMENTS:**

- Attachment 1. Development Plan
- Attachment 2. Standard Lease Agreement and Special Stipulations