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

Southeast Regional Land Office

Preliminary Decision
ADL 106446
Frank Stelmach
dba Island Point Lodge
Application for Lease
AS 38.05.075(c)

Executive Summary

This Preliminary Decision (PD) is the State's preliminary best interest finding regarding a proposed disposal of interest in state land. Island Point Lodge, (applicant) has applied for an amendment to their existing lease to expand their dock area by adding 6 new 10ft by 20ft floating docks and 6 corresponding pilings. The State intends to authorize this lease amendment contingent on comments received herein. The public is invited to comment on this PD. The deadline for commenting is 5:00 pm May 12, 2023. 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

The Division of Mining, Land and Water (DMLW) received a supplemental application on June 13, 2022, from Mr. Frank Stelmach. The application is for an amendment to existing tideland lease, ADL 106446, for dock expansion in association with Island Point Lodge, operated by the applicant. A development diagram is included as Attachment 1.

Proposed Improvements:

- Six 10ft by 20ft mooring floats
- Six 12-inch galvanized steel pilings, each will anchor one of the proposed floats

The total area requested by the applicant is approximately 0.2 additional acres seaward of the original leasehold area. Final acreage will be determined by an approved as-built diagram of the leasehold. This, combined with the original .552 acres recorded for ADL 106446, would total .752 acres.

Proposed Action

DMLW proposes to amend existing tideland lease, ADL 106446, for the applicant to construction, operate and maintain the additional area and proposed dock structures.

Scope of Decision

The scope of this decision is limited to the determination of whether it is in the State's best interest to amend existing tideland lease, ADL 106446, for 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 PD, Final Finding and Decision (FFD), Entry Authorization (EA), 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 Central/Southern Southeast Area Plan, 2000 (CSSAP) and other classification references described herein, and the casefile for the application serialized by DNR as ADL 106446.

Location Information

Geographic Location:
The parcel is located 12 miles south of Petersburg, Alaska within the Wrangell Narrows, a navigable body of water adjacent to Kupreanof Island.

Property Description:
The proposed lease is located within Section 14, Township 60 South, Range 79 East, Copper River Meridian and more particularly located seaward and adjacent to upland lots 5 and 6 of the Ohmer Subdivision, ATS 1591, Petersburg Recording District. The proposed addition to the lease area contains approximately 0.2 acres, more or less.

Other Land Information:
Municipality: Petersburg Borough
Federally Recognized Tribe: Petersburg Indian Association
Federally Recognized Tribe: Wrangell Cooperative Association
Native Corporation: Sealaksa

Title
The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying Wrangell Narrows 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
The DMLW identifies adjacent lands and interests therein in an effort to identify parties potentially affected by proposed uses of state land. The following lands are functionally connected to the subject land or are in the immediate vicinity.

Adjacent to the north, Stephen and Wendy Yates own an upland parcel with an associated DMLW authorization (LAS 26826) for Majestic Eagle Lodge that is currently suspended.

Adjacent to the south, Timothy Harper owns an upland parcel with an associated DMLW authorization (ADL 107805) for Greenrocks Wilderness Lodge that is currently expired.

Planning and Classification
The 1999 preliminary decision referenced Site Specific Plan C-SE-99-002 and listed classification as Wildlife Habitat/Public Recreation/Waterfront Development. This site-specific plan was superseded by the Central Southern Southeast Area Plan (CSSAP) in 2000. The proposed activity is consistent with the CSSAP. Located in Region 3 – Petersburg-Central, the designated land unit is GU, which converts to General Use as the land classification. The following CSSAP excerpts describe this designation of the proposed tideland lease area, for the reason that there was no further or more specifically labelled designation:

> "When pertaining to tideland, this "GU" designation applies to tidelands, shorelands and submerged lands not designated for specific, habitat, harvest, economic, or recreation functions." (CSSAP, Ch.3, p.2)

> "Areas not specifically identified with a designation on the Plan Maps; not otherwise classified in the plan; or that are acquired by the state subsequent to the approval date of this plan, are designated General Use." (CSSAP, Ch.3, p. 3)

While the area is designated General Use, this project supports the goals and area-wide land management policies set out in chapter 2 of the CSSAP by encouraging both settlement and economic development by allowing commercial use that further contributes to recreational opportunities in an area where recreation needs can most effectively be provided by private enterprise. The intended use will also follow management guidelines set out in chapter 2 of the CSSAP by minimizing environmental impacts and conflicts with the existing users of the area, as well as by conforming to the requirements of AS 38.05.075.

The proposed leasehold is within the Petersburg Borough and may be subject to local planning and zoning ordinances. The Borough will be notified of this Preliminary Decision.

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

Access
The physical and legal access to the proposed lease site is via tide and submerged lands of the Wrangell Narrows and is only accessed via boat or aircraft.

Access Along Public Waters:
The site is located on the Wrangell Narrows. 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, DMLW is required to reserve specific public-access easements to and along these waters. Unless comments and other information submitted to 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 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, 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 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 will not 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.

Agency Review
An agency review was conducted on July 25, 2022. The deadline for agency comments was August 8, 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

Agency Review Comment and Response:
Alaska Department of Fish & Game (ADF&G) Comment:

ADF&G has no objection to the amendment but suggests coordinating construction dates with the National Marine Fisheries Service (NMFS) to avoid conflict with marine mammal species.

DMLW Response:

DMLW will include these concerns in the decision and ask the applicant to discuss timing windows with NMFS. NMFS will also be included in the public notice of the preliminary decision.

Background
- October 7, 1992 – Island Point Lodge applied for a tideland permit for a 140' long dock.
- December 2, 1992 – Tideland permit, SET 93-020, was issued.
- February 8, 1995 - SET 93-020 was modified to 192' long with two 190' long boom sticks.
- December 1, 1997 – SET 93-020 expired.
- January 2, 1998 – DMLW received initial application for tideland lease authorization.
- July 8, 1999 – DMLW signed preliminary decision for ADL 106446.
- February 15, 2001 – Survey ATS 1591 filed for original 0.552 acres.
- August 15, 2002 – Final authorization approved and issued for 55 years, expiring August 14, 2057.
- March 10, 2008 – DMLW received application to install three additional docks and pilings.
- August 12, 2008 – Letter of authorization signed by DMLW and applicant approving amendment additions.

- June 13, 2014 – Letter sent by DMLW requesting as-built survey that was required in 2008 amendment authorization letter.
- June 3, 2022 – DMLW received application to install another six additional docks and pilings.

Discussion
Island Point Lodge was started in 1989 as a sport fishing lodge on the Wrangell Narrows on Kupreanof Island. Over the course of 33 years, Frank Stelmach has transformed the lodge on his upland property from a single A-frame structure to include 13 buildings and attached structures. As noted in the background portion of this decision, Mr. Stelmach has worked with DNR, DMLW to facilitate all the necessary authorizations that have been and are currently used as access and support resources for Island Point Lodge such as pilings and floating docks located on the tidelands.

With the only access to the remote property being by water, these structures are critical to the daily operations of life and business for Mr. Stelmach and Island Point Lodge. During the operating season of April through September, the lodge has eight full-time employees while somewhere between 350-400 guests visit the lodge as well.

The proposed addition will not change any current operating system or site usage that has been previously authorized under ADL 106446. It is a similar addition to those in the past by adding pilings and floats; however, this addition will extend past the lease boundary set by the original authorization and ATS 1591. The survey requirements that address this change are found in the survey section of this decision.

The structures that will be added to ADL 106446 will consist of two 10ft by 20ft float sections extending easterly into the channel and four 10ft by 20ft float sections extending southerly into and "L" configuration and running parallel with the existing dock. Each of these additional float sections will be accompanied by a 12-inch, galvanized steel piling, cut down from 40ft in length to match present piling heights of the dock. The maximum width of vessel used and moored at these floating docks will be 8ft wide, with vessel lengths ranging from 17.5ft to 22ft long.

While this amendment will benefit the business and allow for additional moorage and larger vessels, it will also provide safer circumstances for all by allowing improved access at minus tide which, according to Mr. Stelmach, has the present dock sitting in only inches of water. This would also help prevent damage to the vessels used.

The lease shall be subject to the original lease agreement of ADL 106446, the lease amendment to be made final after all deliverables are received, and any terms and conditions set forth therein (Attachment 2).

Development Plan
The Development Plan (DP) attached to this decision (Attachment 1) was received April 23, 2022 and is under consideration by DMLW. This DP should be reviewed in conjunction with

ATS 1591 and all other site diagrams from previous amendments. 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.

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 allow site development and conduct the required as-built diagram described below. The proposed EA is for a term of two 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:

> **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.
>
> Island Point Lodge has previously submitted a performance guaranty in the amount of $4,400.00 for existing improvements and authorization of ADL 106446. Currently, the amount of the performance guaranty could be up to $6,252.00 based on DMLW's updated bond matrices. However, given the applicant's past compliance, the limited concerns received from agency review, and the minimum impact expected of this authorization, DMLW has decided that increasing the bond is not necessary.

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 additional survey at this time. 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. Original authorization and improvements of ADL 106446 are recorded on ATS 1591. The applicant will; however, be required to submit a scaled diagram with GPS coordinate points of all four leasehold corners that encompass all ADL 106446 structures as well as operating distances that allow for accurate vessel moorages. Remittance of an approved diagram will be required before the final 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 for this lease amendment. Based on a market check of the existing authorization by the DMLW Appraisals Unit, the compensation will remain as previously determined.

Compensation

Annual Land Use Fees:
A Market Check for the proposed leasehold was completed on October 25, 2022. In accordance with AS 38.05.840(b), the applicant will not be required to provide an appraisal before lease issuance, and the proposed EA and Lease annual fee will be $1,750.00. Furthermore, in accordance with AS 38.05.105, the proposed EA and Lease will be subject to reappraisal at five-year intervals after the issuance of the proposed authorization.

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 DMLW. 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 April 12, 2023. 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 May 12, 2023 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: *Laurel Smith* 400 Willoughby Avenue, 4th Floor PO Box 111020 Juneau, AK 99811-1020
Email:	laurel.smith@alaska.gov
Fax:	(907) 500 - 9011

Questions about the lease portion of this project can be directed to *Laurel Smith* at (907) 465-3524.

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 this lease amendment to the applicant authorizing the applicant to expand their original leasehold area that was granted with ADL 106446, and to install 6 additional floats and 6 corresponding pilings. 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.

Laurel Smith — 04/10/2023

Laurel Smith, Natural Resource Specialist — 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 lease amendment to the applicant, as described above. This preliminary decision shall now proceed to public notice.

Megan Hillgartner — 4/10/2023

Megan Hillgartner, Southeast Regional Manager — Date

ATTACHMENTS:

Attachment 1. Development Plan
Attachment 2. Draft Lease Amendment
Attachment 3. Draft Entry Authorization