

STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND & WATER
SOUTHCENTRAL REGIONAL LAND OFFICE

FINAL FINDING AND DECISION

ADL 234089

Application for Lease
AS 38.05.070(b)

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) dated December 4, 2023. To be eligible to appeal this decision, a person must have provided a written comment during the comment period of the PD.

Changes to the Decision:

Title:

The State of Alaska holds fee title to the subject land and mineral estates under U. S. Patent No. 50-65-0149 dated September 9, 1964, which was acquired through State Selection GS 1198. A Department of Natural Resources (DNR) Title Report (RPT-22954) issued on December 22, 2023, from the Division of Mining, Land, and Water's (DMLW) Realty Services Section attests that aside from the usual reservations for ditches, canals, railroads, telegraph and telephone lines, and water rights there are four other reservations within the proposed lease site:

State Interests:

- *Surface*
 - ADL 22386, Public Access Easement, DMLW, SCRO
 - ADL 222127, Interagency Land Management Assignment, Department of Transportation and Public Facilities (DOTPF)
- *Subsurface*
 - LST CI0734, Oil & Gas Lease Sale Tract, is associated with ADL 392658
 - ADL 392658, Competitive Oil & Gas Lease, Hilcorp Alaska, LLC

Action:

The DNR, DMLW, Southcentral Regional Land Office (SCRO) has made the determination to issue a 10-year tideland lease under the authority of AS 38.05.070(b) to Copper River Seafoods (CRS) for the operation and maintenance of its existing dock and maintenance area in support of CRS's seafood purchasing and processing business located in Ninilchik, Alaska. The location of

the project area is further described as being within the SW 1/4 of the SE 1/4 of Section 27, Township 1 South, Range 14 West, Seward Meridian, Alaska.

Public Notice of the Preliminary Decision:

Pursuant to AS 38.05.945, the PD was advertised for a 30-day public comment period, beginning on December 5, 2023. Notice was posted at the post offices located in Ninilchik, Anchor Point, and Clam Gulch, and on the State's Online Public Notice website. Notices were also mailed or e-mailed to neighboring property owners, permit/lease holders, and other interested parties on December 5, 2023.

No comments were received during public notice. During agency review, three comments were received by the DOT&PF, Public Access Assertion and Defense (PAAD), and the Alaska Department of Fish and Game (ADF&G), which are addressed in the PD and incorporated herein by reference.

Signature page follows:

Recommendation:

SCRO 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. This decision considered submitted agency comments. The issuance of this lease serves the best interest of the State as it provides a direct and indirect economic benefit to the State and encourages the development of the State's resources. Collection of the one-time filing fee and annual rent represents the direct economic benefit realized by the State. The lease provides an indirect economic benefit to the State by allowing the public to utilize the State's natural resources for an individual economic benefit. The authorization of this lease is in the State's best interest as it will enhance the local economy and continue to provide seasonal employment in Ninilchik. The maintenance and continued use of this small dock harbor ensures that CRS can continue fish processing operations that benefit the surrounding communities and provide Alaskan goods and services worldwide. It is therefore recommended that DMLW issue CRS, a 10-year lease under the authority of AS 38.05.070(b) as shown in the following attachments:

- Attachment A – Draft Lease Agreement
- Attachment B – Draft Additional Stipulations
- Attachment C – Preliminary Decision
- Attachment D – Development Plan



2/1/2024

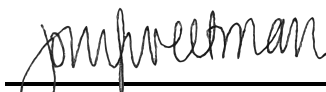
Emily Gettis, Natural Resource Specialist

Division of Mining, Land & Water, Southcentral Regional Land Office

Date

Final Finding and Decision:

The findings of the Preliminary Decision have been reviewed and considered. Public Notice has been accomplished in accordance with AS 38.05.945. The case file has been found to be complete and the requirements of all applicable statutes have been satisfied. I find that it is in the best interest of the State to proceed with this lease as described above, under the authority of AS 38.05.070(b) and AS 38.05.035(e). The applicant will be required to pay the annual lease fee of \$1,000.00, submit a \$1,000.00 performance bond, and provide proof of liability insurance. If no appeal is filed by the appeal deadline, this decision goes into effect on the 31st day after issuance, and the lease term must start within one year of effective date of this decision. However, if the applicant does not submit the required deliverables within one year of effective date of this decision, the Southcentral Regional Land Office may choose to rescind this decision.



2/1/2024

Joni Sweetman, Acting Regional Manager

Division of Mining, Land & Water, Southcentral Regional Land Office

Date

Appeal:

An eligible person affected by this decision, and who provided timely written comment or public hearing testimony to the department, may appeal the decision to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any appeal must be received within twenty (20) calendar days after issuance of this decision under 11 AAC 02.040. An eligible person must first appeal a decision to the Commissioner before seeking relief in superior court. The Alaska Court System establishes its own rules for timely appealing final administrative orders and decisions of the department. Appeals may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. Appeals must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$200 under the provisions of 11 AAC 05.160 (a)-(b). A copy of 11 AAC 02 is available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.

Attachment A Draft Lease

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

550 W. 7th Avenue, Suite 900c
Anchorage, Alaska 99501-3577

Copper River Seafoods

ADL No. 234089

LEASE AGREEMENT

AS 38.05.070(b)

Effective this **Xst** day of **MONTH 2024**, this lease agreement is entered into by the State of Alaska, hereafter referred to as "lessor," and **COPPER RIVER SEAFOODS**, hereafter referred to as "lessee," whether one or more, whose sole addresses for purposes of notification under this lease agreement are listed in section 28.

The lessor and the lessee agree that this lease, including all attachments and documents that are incorporated in this lease by reference, contains the entire agreement between the parties, and each of the covenants and conditions in this lease including any attachments will be binding upon the parties and upon their respective successors and assigns. The lessor and the lessee further agree that this lease is conditioned upon satisfactory performance by the lessor and the lessee of all covenants and conditions contained in this lease. The lessee is aware of the provisions of Title 38, Alaska Statutes, Title 11, Alaska Administrative Code, and other applicable laws, regulations, and ordinances, and fully understands the duties and obligations of the lessee under this lease, and the rights and remedies of the lessor.

This lease is subject to all applicable state, federal, and municipal statutes, regulations, and ordinances in effect on the effective date of this lease, and insofar as is constitutionally permissible, to all statutes, regulations, and ordinances placed in effect after the effective date of this lease. A reference to a statute, regulation, or ordinance in this lease includes any change in that statute, regulation, or ordinance, whether by amendment, repeal and replacement, or other means. This lease does not limit the power of the State of Alaska, its political subdivisions, or the United States of America to enact and enforce legislation or to adopt and enforce regulations or ordinances affecting, directly or indirectly, the activities of the lessee or its agents in connection with this lease or the value of the interest held under this lease. In case of conflicting provisions, statutes, regulations, and ordinances take precedence over this lease. This lease shall not be construed as a grant or recognition of authority for promulgation or adoption of municipal ordinances that are not otherwise authorized.

1. Grant. This lease is issued under the authority of **AS 38.05.070(b)** for a term of **10** years beginning on the **Xst** day of **MONTH 2024**, and ending at 11:59PM on the **Xth** day of **MONTH 2034**, unless sooner terminated, subject to: compensation as specified in section 2; the attached Additional Stipulations (Attachment A); and the attached development plan approved by the State on **SEPTEMBER 14, 2022** (Attachment B); and if any, that are incorporated in and made a part of this lease, for the following, hereafter referred to as the "leasehold":

LEGAL DESCRIPTION

Excepting and reserving any general reservations to the lessor that are required by law and that may be stated elsewhere in this lease, and the following, which the state reserves for itself and others:

Subject to:

Alaska State Land Survey No 86-166
Plat Number: 87-35

Attachment A Draft Lease

The conditions and stipulations in Attachment A, Additional Stipulations.

Attachment B, Approved Development Plan, attached and made part of this lease agreement.

2. Compensation. (a) The lessee shall pay to the lessor compensation as follows, without the necessity of any billing by the lessor: **\$1,000.00** due on or before **MONTH DAY** every year. The lessor may, upon 10 days' notice, review and copy any records of the lessee that are necessary to verify the lessee's compliance with this paragraph.

(b) In accordance with AS 38.05.105, the lease compensation is subject to adjustment by the lessor at the commencement of the sixth year of the term and every fifth year thereafter (the "adjustment date"). The compensation adjustment takes effect on the applicable adjustment date, regardless of whether the adjustment determination occurs before or after that date. All reasonable costs of the adjustment, including reappraisal if required by the lessor, will be borne by the lessee.

3. Denial of Warranty. The lessor makes no warranty, express or implied, nor assumes any liability whatsoever, regarding the social, economic, or environmental aspects of the leasehold, including, without limitation, the soil conditions, water drainage, access, natural or artificial hazards that may exist, or the profitability or fitness of the leasehold for any use. The lessee represents that the lessee has inspected the leasehold and determined that the leasehold is suitable for the use intended, or has voluntarily declined to do so, and accepts the leasehold "as is" and "where is."

4. Use of Leasehold. Prior to execution of this lease and to commencing use or development of the leasehold, the lessee shall submit a development plan for the leasehold to the lessor and obtain the lessor's approval of the plan. Any use or development of the leasehold must be consistent with the development plan approved by the lessor. Any proposed revisions to the development plan must be submitted to the lessor for approval before any change in use or development occurs. The lessee shall use and occupy the leasehold in compliance with the approved development plan and all applicable laws, regulations, ordinances, and orders that a public authority has put into effect or may put into effect, including those of a building or zoning authority and those relating to pollution and sanitation control. The lessee may not permit any unlawful occupation, business, or trade to be conducted on the leasehold. The lessee shall properly locate all activities and improvements on the leasehold, and may not commit waste of the parcel. The lessee shall maintain and repair the leasehold including improvements in a reasonably neat and clean condition, and shall take all necessary precautions to prevent or suppress grass, brush, or forest fires, and to prevent erosion, unreasonable deterioration, or destruction of the land or improvements. The lessee agrees not to place any aboveground or underground fuel or chemical tanks on the leasehold without the prior written approval of the lessor.

5. Encumbrance of Leasehold. The lessee may not encumber or cloud the lessor's title to the leasehold, or any portion of the leasehold, nor enter into any lease, easement, or other obligation of the lessor's title without the prior written approval of the lessor.

6. Assignment of Interest. The lessee may not assign or sublet any interest held under this lease, including a security interest, without the prior written approval of the lessor. The lessor may approve such assignment or subletting if the lessor finds it to be in the best interest of the state. No such assignment or subletting will be effective until approved by the lessor in writing, and the assignee agrees to be subject to and governed by the provisions of this lease, any subsequent amendments to this lease, any additional stipulations, or reappraisal as deemed appropriate by the lessor, and all applicable laws, regulations, and ordinances in the same manner as the original lessee. No assignment or subletting of the leasehold, or any portion thereof, by the lessee will annul the lessee's obligation to pay the compensation required for the full term of this lease. Except as provided in this lease, no subdivision of the leasehold interest may occur without the prior written approval of the lessor.

Attachment A

Draft Lease

7. Conditional Lease. If all or part of the leasehold has been tentatively approved, or approved, but not yet patented, by the United States to the lessor, then this lease will be conditioned upon receipt by the lessor of such patent. If for any reason the lessor does not receive patent, any compensation paid to the lessor under this lease will not be refunded. Any prepaid compensation for land to which patent is denied the lessor will be refunded to the lessee of record in the amount of the pro-rata portion of the unexpired term. The lessor will have no further liability to the lessee for the termination of the lease.

8. Payment of Taxes and Assessments. The lessee shall pay prior to delinquency all taxes and assessments accruing against the leasehold.

9. Section Line Rights-of-Way. If the leasehold borders on or includes one or more section lines, the lessor hereby expressly reserves unto itself and its successors and assigns a right-of-way or rights-of-way pursuant to AS 19.10.010.

10. Navigable and Public Waters. (a) Pursuant to AS 38.05.127 and 11 AAC 53.330, the lessor reserves a public access easement to and along all public or navigable water bodies that border on or are included in this leasehold. No public access easement may be obstructed or otherwise rendered incapable of reasonable use for the purposes for which it was reserved. No public access easement may be vacated, abandoned, or extinguished without the prior written approval of the lessor.

(b) The Public Trust Doctrine guarantees public access to, and the public right to use, navigable and public waters and the land beneath them for navigation, commerce, fishing, and other purposes. This lease is issued subject to the principles of the Public Trust Doctrine regarding navigable or public waters. The lessor reserves the right to grant other interests to the leasehold consistent with the Public Trust Doctrine.

11. Condemnation of Leasehold or Improvements. If the whole or any part of the leasehold is taken by any authorized body or person vested with the power of eminent domain, by negotiation, court action, or otherwise, the following provisions control:

(1) Taking of the entire leasehold. If all of the leasehold is taken by condemnation, this lease and all rights of the lessee will immediately terminate, and the compensation will be adjusted so that it is due only until the date the lessee is required to surrender possession of the leasehold. The lessor is entitled to all the condemnation proceeds, except that the lessee will be paid the portion of the proceeds attributable to the fair market value, as determined in the condemnation proceedings, of any buildings or improvements taken that were placed on the condemned leasehold by the lessee in accordance with the approved development plan.

(2) Taking of substantial part of the leasehold. If the taking is of a substantial part of the leasehold, the following rules apply:

(A) If the taking by condemnation reduces the ground area of the leasehold by at least 30 percent or materially affects the use being made by the lessee of the leasehold, the lessee has the right to elect to terminate the lease by written notice to the lessor not later than 180 days after the date of taking.

(B) If the lessee elects to terminate, the provisions in subsection (1) of this section govern the condemned portion of the leasehold and the covenants and conditions of the lease govern disposal of the remainder of any buildings or improvements made by the lessee in accordance with the approved development plan.

(C) If the lessee does not elect to terminate, the lease continues and the lessor is entitled to the full condemnation proceeds except the portion attributable to the fair market value, as determined in the condemnation proceedings, of any buildings or improvements taken that were placed on the condemned portion of the leasehold by the lessee in accordance with the approved development plan. Compensation at the existing rate will terminate on the date the lessee is required to surrender possession of the condemned portion of the leasehold. Except as it may be adjusted from time to time

Attachment A

Draft Lease

under the covenants and conditions of the lease and applicable statutes, compensation for the balance of the term will be adjusted by the lessor to reflect the taking.

(3) Taking of insubstantial part of the leasehold. If the taking by condemnation reduces the ground area of the leasehold by less than 30 percent and the lessor determines that the taking is of such an insubstantial portion that the lessee's use of the leasehold is not materially affected, the lessee may not elect to terminate the lease and the compensation provisions of subsection 2(C) of this section will govern.

12. Valid Existing Rights. This lease is subject to all valid existing rights, including easements, rights-of-way, reservations, or other interests in land in existence on the date of execution of this lease.

13. Inspection. The lessor will have reasonable access to the leasehold for purposes of inspection.

14. Mineral Reservations. This lease is subject to the reservations required by AS 38.05.125 and the rights and obligations imposed by AS 38.05.130.

15. Concurrent Use. This lease is subject to reasonable concurrent uses as provided under Article VIII, Section 8 of the Constitution of the State of Alaska. The concurrent user who is found to be at fault for damage or injury arising from noncompliance with the terms governing the user's concurrent use is liable for damages and the user's interest is subject to forfeiture or termination by the lessor. In this context, the term "concurrent user" includes the lessee and any other person or entity who lawfully uses the land subject to this lease, but does not include the State of Alaska.

16. Surface Resources. Unless otherwise provided by this lease or other written authorization, the lessee may not sell or remove from the leasehold any timber, stone, gravel, peatmoss, topsoil, or any other material valuable for building or commercial purposes. Material required for the development of the leasehold may be used only in compliance with the approved development plan.

17. Appropriation or Disturbance of Waters. During the term of this lease, the lessee will have the right to apply for an appropriation of ground or surface water on the leasehold in accordance with AS 46.15 and 11 AAC 93.060.

18. Acquisition of Rights or Interests. Any right or interest acquired during the term of this lease and accruing to the benefit of the leasehold will remain appurtenant to the leasehold, and may not be severed or transferred from the leasehold without the prior written approval of the lessor. In the event of termination or forfeiture of this lease, any such right or interest will vest in the lessor.

19. Land Alterations Due to Natural or Artificial Causes. The interest described in this lease constitutes the entire leasehold. If, through natural or artificial causes, accretion or reliction of land occurs contiguous to the leasehold, the Lessee has no right to occupy or use the accreted land unless a separate lease is entered with the Lessor with respect to such lands. The rules of law usually applicable to accretion or reliction of land do not apply to this lease, nor to the interest described in this lease.

20. Waiver or Forbearance. The receipt of compensation by the lessor, with or without knowledge of any default on the part of the lessee, is not a waiver of any provision of this lease. No failure on the part of the lessor to enforce a covenant or condition of this lease, nor the waiver of any right under this lease by the lessor, unless in writing, will discharge or invalidate the application of such covenant or condition. No forbearance or written waiver affects the right of the lessor to enforce any covenant or condition in the event of any subsequent default. The receipt of compensation by the lessor after termination or any notice of termination will not reinstate, continue, or extend this lease, or destroy, or in any manner impair the validity of any notice of termination that may have been given prior to receipt of the compensation, unless specifically stated by the lessor in writing.

Attachment A

Draft Lease

21. Default and Remedies. (a) Time is of the essence in this lease. If the lessee defaults on the performance of any of the covenants or conditions of this lease, and the default is not remedied within 60 days after the lessor issues written notice of such default to the lessee and to the holder of a security interest in the leasehold approved

by the lessor, or within any additional period the lessor allows for good cause, the lessee will be subject to legal or any other administrative action deemed appropriate by the lessor, including termination of this lease. The lessor may, in the notice of the default or in a separate written notice, state that if the default is not remedied, this lease shall terminate on a date certain, which shall be at least 60 days after issuance of the notice of default. Upon the date specified in such notice, unless the default has been remedied, the lease shall expire automatically without further notice or action by the lessor and this lease and all rights of the lessee under the lease shall terminate. Upon termination of the lease the lessor shall have an immediate right to possession of the leasehold and any possession by the lessee shall be unlawful. It is specifically agreed that no judicial action shall be necessary to terminate this lease or to allow the lessor to retake possession in the event of default by the lessee. No improvements may be removed from the leasehold while the lease is in default except with the lessor's prior written approval. If this lease is terminated for default, all compensation paid by the lessee is forfeited to the lessor. The lessor is not liable for any expenditures made or undertaken by the lessee under this lease. Any costs or fees, including attorney's fees, reasonably incurred by the lessor for the enforcement of this lease, shall be added to the obligations due and payable by the lessee.

(b) The rights, if any, of third-party security interest holders or lienholders are controlled solely by AS 38.05.103 and 11 AAC 58.590. If the lessee fails to remedy the default within the time allowed in subsection (a) of this section, the holder of an approved security interest who has received notice under subsection (a) of this section may remedy the default. The holder shall act within 60 days from the date of receipt of notice under subsection (a) of this section, or within any additional period the lessor allows for good cause.

(c) The lessor may, at the lessor's option, following the lessee's default and failure to remedy, or after termination of this lease due to such default and failure to remedy, accelerate the unpaid compensation for the remainder of the term of this lease. The lessee's obligation to pay such accelerated rent to the lessor survives termination of this lease.

(d) If this lease is terminated, or all or any portion of the leasehold is abandoned by the lessee, the lessor may immediately enter, or re-enter and take possession of the leasehold, and without liability for any damage, remove all persons and property from the leasehold and may, if necessary, use summary proceedings or an action at law. The words "enter" and "re-enter" as used are not restricted to their technical legal meaning. Any entry, re-entry, possession, repossession, or dispossession by the lessor, whether taken with or without judicial action, does not absolve, relieve, release, or discharge the lessee, either in whole or part, of any liability under the lease.

(e) The lessor, upon or at any time after giving written notice of any default, may enter or re-enter the leasehold to remedy any default by the lessee or exercise any right given under this lease, all without the intervention of any court being required. The curing of such default shall not be deemed for any purpose to be for the benefit of the lessee.

(f) At any time after termination of this lease, the lessor may re-let the leasehold, or any part thereof, in the name of the lessor for such term and on such conditions as the lessor may determine, and may collect and receive the compensation therefor. The lessor shall not be responsible or liable for failure to re-let the leasehold or for any failure to collect any compensation due upon such re-letting, nor shall the lessor be required to account for or pay to the lessee any excess compensation received as a result of such re-letting. The lessee shall be liable for any deficiency, and for all costs, expenses, and fees incurred by the lessor arising out of the default, including the lessor's efforts to re-let the leasehold.

(g) No right or remedy conferred upon or reserved to the lessor in this lease or by statute, or existing in law or equity, is intended to be exclusive of any other right or remedy, and each and every right shall be cumulative.

Attachment A

Draft Lease

22. Disposition of Improvements and Chattels After Termination. AS 38.05.090 will govern disposition of any lessor-approved chattels or improvements left on the leasehold after termination. At the lessor's sole option, improvements not approved by the lessor shall be removed from the leasehold and the site restored to its original condition at the lessee's sole expense, or be forfeited to the lessor. The lessee shall be liable to the lessor for any costs, expenses, or damages arising out of the disposition of improvements not approved by the lessor, and may be required to pay rent on any improvements or chattels left on the parcel in accordance with 11 AAC 58.680.

23. Indemnity to Lessor. The lessee shall indemnify, defend, and hold the lessor harmless from and against all claims, demands, judgments, damages, liabilities, penalties, and costs, including attorney's fees, for loss or damage, including but not limited to property damage, personal injury, wrongful death, and wage, employment, or worker's compensation claims, arising out of or in connection with the use or occupancy of the leasehold by the lessee or by any other person holding under the lessee, or at the lessee's sufferance or invitation; and from any accident or fire on the leasehold; and from any nuisance made or suffered on the leasehold; and from any failure by the lessee to keep the leasehold in a safe and lawful condition consistent with applicable laws, regulations, ordinances, or orders; and from any assignment, sublease, or conveyance, attempted or successful, by the lessee of all or any portion of the leasehold or interest therein contrary to the covenants and conditions of this lease. The lessee holds all goods, materials, furniture, fixtures, equipment, machinery, and other property whatsoever on the parcel at the sole risk of the lessee, and shall defend, indemnify and hold the lessor harmless from any claim of loss or damage by any cause whatsoever, including claims by third parties.

24. Insurance. If required by the lessor, the lessee shall obtain insurance in an amount determined by the lessor to be sufficient. The lessor shall be named as an additional insured party of any such insurance. The types and amount of insurance shall be specified in the attached stipulations made a part of this lease agreement and may be adjusted periodically. The lessee shall maintain that insurance as long as required by the lessor. Any insurance acquired by the lessee for the purpose of providing insurance coverage under this lease must be issued by an insurer authorized to do business in the State of Alaska under the provisions of AS 21.09.010 and AS 21.27.010 for the type of policy being written.

25. Bonding. If required by the lessor, the lessee shall furnish a bond, cash deposit, certificate of deposit, or other form of security acceptable to the lessor in an amount determined by the lessor to be sufficient to ensure faithful performance of the covenants and conditions of this lease, and to cover the cost of site cleanup and restoration and any associated costs after termination of the lease. The amount and conditions of the bond shall be specified in the attached stipulations made a part of this lease agreement. The lessee shall maintain the bond as long as the lessor deems necessary, and in the amount required by the lessor, which amount may be adjusted periodically.

26. Environmental Compliance. (a) The lessee shall, at the lessee's own expense, comply with all existing and hereafter enacted environmental responsibility laws ("Environmental Laws"). The lessee shall, at the lessee's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Environmental Laws.

(b) Should the Authority require that a remedial action plan be prepared and that a remedial action be undertaken because of the presence of, or any disposal, release, spill, or discharge, or threatened disposal, release, spill, or discharge of or contamination by hazardous materials at the leasehold that occurs during the term of this lease or arises out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease, then the lessee shall, at the lessee's own expense, prepare and submit the required plans and financial assurances and carry out the approved plans. The lessee's obligations under this section shall arise if there is any event or occurrence at the leasehold during the term of this lease, or arising out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease, that requires compliance with the Environmental Laws.

(c) At no expense to the lessor, the lessee shall promptly provide all information requested by the lessor for preparation of affidavits or other documents required by the lessor to determine the applicability of the Environmental Laws to the leasehold, and shall sign the affidavits promptly when requested to do so by the lessor.

Attachment A Draft Lease

(d) The lessee shall indemnify, defend, and hold harmless the lessor from all fines, penalties, suits, judgements, procedures, claims, demands, liabilities, settlements, and actions of any kind arising out of or in any way connected with the presence of or any disposal, release, spill, or discharge or any threatened disposal, release, spill, or discharge of or contamination by hazardous materials at the leasehold that occurs during the term of the lease or arises out of or in connection with the lessee's use or occupancy of the land described in section 1 of

this lease; and from all fines, penalties, suits, judgements, procedures, claims, demands, liabilities, settlements, and actions of any kind arising out of the lessee's failure to provide all information, make all submissions, and take all steps required by the Authority under the Environmental Laws or any other law concerning any spill, discharge, or contamination that occurs during the term of this lease or arises out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease.

(e) The lessee agrees that it will not discharge or dispose of or suffer the discharge or disposal of any petroleum products, gasoline, hazardous chemicals, or hazardous materials into the atmosphere, ground, wastewater disposal system, sewer system, or any body of water.

(f) In any court action or administrative proceeding, in addition to all other applicable presumptions, it shall be rebuttably presumed that any environmental contamination of the leasehold (i) has been released on the leasehold; (ii) has resulted from acts or omissions of the lessee or its agents; and (iii) has occurred during the term of this lease. The lessee has the burden of rebutting the presumptions by clear and convincing evidence.

(g) This section of this lease does not in any way alter the State of Alaska's powers and rights or the lessee's duties and liabilities under Title 46 (or its successor) of the Alaska Statutes or other state, federal, or municipal statutes, regulations, or ordinances. For example, notwithstanding the provisions of this lease, the State of Alaska shall not be precluded from claiming under AS 46.03.822 that the lessee is strictly liable, jointly and severally, for damages and costs incurred by the state for clean up of contamination on the leasehold. The obligations and provisions of this section 26 shall survive the termination of this lease.

(h) As used in this lease, the term "hazardous materials" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any municipal governmental authority, the State of Alaska, or the United States government.

27. Surrender of Leasehold. Upon the expiration, termination, or cancellation of this lease, the lessee shall peacefully leave and deliver up all of the leasehold in good, sanitary, and marketable condition, order, and repair.

28. Notices. (a) Any notice or demand by the lessee will be made by hand delivery to the Director, Division of Mining, Land and Water, or by certified mail, postage prepaid, addressed as follows (or to a new address that the lessor designates in writing), with delivery occurring upon receipt by the lessor:

To the Lessor:

Division of Mining, Land and Water
550 W. 7th Avenue, Suite 900C
Anchorage, Alaska 99501-3577

(b) Any notice or demand by the lessor will be issued as provided in 11 AAC 02.040(c). If issuance is by mail, the notice or demand will be addressed as follows (or to a new address that the lessee or its successor in interest designates in writing):

To the Lessee:

**COPPER RIVER SEAFOODS
1118 EAST 5TH AVENUE
ANCHORAGE, ALASKA 99501**

Attachment A

Draft Lease

The lessor will issue a copy of any such notice or demand to each holder of a security interest in the leasehold whose assignment has been approved by the lessor under section 6 of this lease. Any security interest not approved as provided in section 6 is insufficient to require notice by the lessor under AS 38.05.103.

(c) Any notice or demand regarding the lease must be in writing and will be complete if given as set out above.

29. Penalty Charges. The lessee shall pay a fee for any late payment or returned check issued by the lessee as follows:

(1) Late Payment Penalty: The greater of either the fee specified in 11 AAC 05.010 or interest at the rate set by AS 45.45.010(a) will be assessed on a past-due account until payment is received by the lessor. Acceptance of a late payment or of a service charge for a late payment is subject to the lessor's rights under sections 20 and 21 of this lease.

(2) Returned Check Penalty: A returned check fee as provided in 11 AAC 05.010 will be assessed for any check on which the bank refuses payment. If the bank refuses payment, the default termination date remains the same. Late penalties under subsection (1) of this section shall continue to accumulate.

30. Modification. This lease may be modified or amended only by a document signed by both parties. Any purported amendment or modification has no legal effect until placed in writing and signed by both parties.

31. Choice of Law. This lease shall be construed under the laws of the State of Alaska. The lessee confers personal jurisdiction on the courts of the State of Alaska for any litigation under this lease.

32. Severability of Clauses of Lease Agreement. If any clause or provision of this lease is, in a final judicial proceeding, determined illegal, invalid, or unenforceable under present or future laws, then the lessor and the lessee agree that the remainder of this lease will not be affected, and in lieu of each clause or provision of this lease that is illegal, invalid, or unenforceable, there will be added as a part of this lease a clause or provision as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

Attachment A Draft Lease

By signing this lease, the lessor and the lessee agree to be bound by its provisions.

LESSEE:

COPPER RIVER SEAFOODS

LESSOR:

JONI SWEETMAN, NATURAL RESOURCE MANAGER 2
Southcentral Regional Land Office

STATE OF ALASKA)
) ss.
_____ Judicial District)

THIS IS TO CERTIFY THAT ON THIS _____ day of _____, _____, before me personally appeared _____, known to me to be the person named and who signed the foregoing lease and acknowledged voluntarily signing the same.

Notary Public in and for the State of Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.
Third Judicial District)

THIS IS TO CERTIFY THAT ON THIS _____ day of _____, _____, before me personally appeared _____, of the Division of Mining, Land and Water of the Department of Natural Resources of the State of Alaska, who executed the foregoing lease on behalf of the State of Alaska, and who is fully authorized by the State to do so.

Notary Public in and for the State of Alaska
My commission expires: _____

Approved as to form February 9, 1994, and September 25, 2001.

/s/ Elizabeth J. Barry, Assistant Attorney General

Recorder's Office: Return the recorded document to:
DNR DMLW, SCRO
ATTN: Emily Gettis
550 W 7th Ave., Suite 900C
Anchorage AK, 99501

Attachment B

Draft Additional Stipulations

1. **Authorized Officer:** The Authorized Officer (AO) for the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), is the Regional Manager or designee.
2. **Preference Right:** No preference right to a sale of this leasehold is granted or implied by the issuance of this Lease. Any renewal of this Lease will be subject to current statutes and regulations at the time of Lease expiration.
3. **Valid Existing Rights:** This authorization is subject to all valid existing rights and reservations in and to the authorized area. The State makes no representations or warranties, whatsoever, either expressed or implied, as to the existence, number, or nature of such valid existing rights.
4. **Change of Contact Information:** The Lessee shall maintain current contact information with the AO. Any change of contact information must be submitted in writing to the AO.
5. **Request for Information:** The AO, at any time, may require the Lessee to provide any information directly or indirectly related to this authorization, in a manner prescribed by the AO.
6. **Compliance with Government Requirements:** The Lessee shall, at its expense, comply with all federal, state, and local laws, regulations, and ordinances directly or indirectly related to this authorization. The Lessee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.
7. **Development Plan:** Development shall be limited to the authorized area and improvements specified in the approved development plan or subsequent modifications approved by the AO. The Lessee is responsible for accurately siting development and operations within the authorized area. Any proposed revisions to the development plan must be approved in writing by the AO before the change in use or development occurs.
8. **Penalty Charges: Late Payment Penalty Charges:** The Lessee shall pay a fee for any late payment. The amount is the greater of either \$50.00 or interest accrued daily at the rate of 10.5% per annum and will be assessed on each past-due payment until paid in full.
Returned Check Penalty: A returned check penalty of \$50.00 will be charged for any check on which the bank refuses payment. Late payment penalties shall continue to accrue.
9. **Visitor Day Use Fee:** All commercial recreation authorizations are subject to a “Visitor Day” fee. As defined in 11 AAC 96.250(18), Visitor Day means “all or any part of a calendar day during which a commercial recreation client is present, with each client representing a separate visitor day if multiple clients are present at any time during a calendar day.” This fee, as established in 11 AAC 05.180(d)(2)(D) or (G), is collected once a year and due on the same day as the annual fee.

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Draft Additional Stipulations

10. **Assignment:** Stipulation 6 of the Lease Agreement is hereby amended to include the following: In the event the Lessee desires to transfer their interest in the lease to another party the Lessee shall submit to the AO a request for assignment and a copy of a draft agreement which identifies the provisions of the assignment between the parties. The AO reserves the right to require/renege on new terms or conditions for the lease prior to approving any assignment. The AO reserves the right to require an assignment between the Lessee and another party in the event of a change in corporate ownership, LLC/LLP membership or name change involving the leased site.
11. **Performance Guaranty:** Per section 25 of the Lease agreement: The Lessee previously posted a performance guaranty in the amount of **\$1,000.00** to secure faithful performance with all terms and conditions of the Lease and to insure site restoration of the leasehold. This performance guaranty must remain in effect for the duration of the Lease term or until released in writing by the AO. Failure by the Lessee to provide replacement security shall be grounds for the AO to make a claim upon the existing security to protect the Lessor's interests.
12. **Insurance:** The Lessee shall secure or purchase at its own expense, and maintain in force at all times during the term of this contract, liability coverages and limits consistent with what is professionally recommended as adequate to protect the buyer (the insured) and seller (the State, its officers, agents and employees) from the liability exposures of ALL the insured's operations on state land. Certificates of Insurance must be furnished to the AO 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 Lessee must provide for a 60-day prior notice to the AO before they cancel, not renew or make material changes to conditions to the policy. Failure to furnish satisfactory evidence of insurance, or lapse of the policy, are material breaches of this lease and shall be grounds, at the option of the AO, 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.
13. **Specific Land Use:** Stipulation 4 of the Lease Agreement is hereby amended to include the following: This lease is issued for a specific use and land classification, use of the area for purposes other than those specified constitutes a breach of the lease agreement and may result in revocation. The lease may be terminated upon a finding by the AO that the land or a part of it has not been used by the Lessee for the purpose specified in the lease for a period of two years. The lease cannot be assigned or subleased except with the consent of the AO. A Lessee may not change the use specified in the lease to another or additional use except with the consent of the AO. Any attempts to depart from these conditions without the consent of the AO will cause the lease to be automatically terminated.
14. **Concurrent Usage:** The AO reserves the right to grant additional authorizations to third parties for compatible uses on or adjacent to the land covered under this authorization. Authorized users of state land, their agents, employees, contractors, subcontractors and licensees shall not interfere with the operation or maintenance activities of other authorized

Attachment B

Draft Additional Stipulations

concurrent users. Any future concurrent permit, lease or sub-lease will be subject to the conditions and stipulations contained in the lease, including the additional collection of fees or rents by the AO from any subordinate Lessee or Sublessee.

15. **Subleasing:** The AO reserves the right to require an additional annual compensation as a condition of a sublease approval. Said increase shall be determined by negotiation between the Lessee and AO but shall not be less than 25% of all compensation paid annually to the Lessee by the Sublessee. Neither the terms of this sublease provision nor any actual compensation derived from a sublease shall have any effect upon a determination of the annual lease fee for the lease parcel pertaining to AS 38.05.075(a) or its appraised market value pertaining to AS 38.05.840. Sublease shall be defined to include any lease, rental, storage, or accommodation agreement between the Lessee and another individual, business or corporation utilizing or benefiting from the lease parcel. Sublessee shall be defined to mean any individual or business entity executing an agreement, as above, with the Lessee. The amount of sublease compensation shall be subject to change at the same time as the lease compensation adjustment and whenever the terms or conditions of the agreement between the Lessee and Sublessee change. Approval of a sublease shall also be conditioned upon:
- a) The Lessee is in full compliance with lease conditions and is in good standing with all other authorization per 11 AAC 96.145;
 - b) Sublessee must meet the statutory requirement of the Lease;
 - c) Submission by the Lessee of a draft copy of the agreement(s) which will govern the relationship and compensation provisions between the Lessee and the Sub-Lessee;
 - d) Submission by the Lessee of a proposed plan of operations and development for the subleased area and, if necessary, an amended plan of operations and development for the entire lease area; and
 - e) A Lessor best interest finding and amendments to the lease contract as necessary, if significant changes to the use and development are proposed.
16. **Alaska Historic Preservation Act:** Under the Alaska Historic Preservation Act, AS 41.35.200, it is unlawful to appropriate, excavate, remove, injure, or destroy any historic, prehistoric, or archaeological resources of the State without a permit from the DNR Commissioner. Should any such resources or sites be discovered, the lessee shall cease any activities that may cause damage and immediately contact the AO and the Office of History and Archaeology in DNR's Division of Parks and Recreation.
17. **Inspections:** Stipulation 13 of the Lease Agreement is hereby amended to include the following: The AO shall have reasonable access to the authorized area for inspection, which may be conducted without prior notice. If the lessee is found to be in noncompliance the authorized area may be subject to reinspection. The lessee may be charged for actual expenses of any inspection or the fee in 11 AAC 05.160.

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18. **Incurred Expenses:** The Lessor shall in no way be held liable for expenses incurred by the Lessee connected with the activities directly or indirectly related to this authorization.
19. **Public Access:** The construction, operation, use, and maintenance of the authorized area shall not interfere with public use of roads, trails, waters, landing areas, and public access easements. The ability to use or access state land or public waters may not be restricted in any manner. However, if a specific activity poses a safety concern, the AO may allow the restriction of public access for a specific period of time. The Lessee is required to contact the AO in advance for approval. No restriction is allowed unless specifically authorized in writing by the AO.
20. **Site and Improvements Maintenance:** The authorized area shall be maintained in a neat, clean, and safe condition, free of any solid waste, debris, or litter, except as specifically authorized. The Lessor is not responsible for maintenance of authorized improvements or liable for injuries or damages related to those improvements. No action or inaction of the Lessor is to be construed as assumption of responsibility.
21. **Site Disturbance:** Stipulation 4 of the Lease Agreement is hereby amended to include the following:
- 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 seeded or planted 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.

22. **Hazardous Substances, Explosives:**

- a) No storage of hazardous material/substances or explosives is authorized within the leased area.
- b) The use of hazardous substances or explosives must be done in accordance with existing federal, state and local laws, regulations and ordinances. Debris

Attachment B

Draft Additional Stipulations

(including soil) contaminated with used motor oil, solvents, or other chemicals may be classified as a hazardous substance and must be removed from the sites and managed and disposed of in accordance with state, federal and local laws, statutes and regulations.

23. **Proper Location:** This authorization is for activities on state lands or interests managed by DMLW. It does not authorize any activities on private, federal, native, or municipal lands, or lands which are owned or solely managed by other offices and agencies of the State of Alaska. The Lessee is responsible for proper location within the authorized area.
24. **Moving or Damaging Markers:** The Lessee shall protect all survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, and unsurveyed corner posts against relocation, damage, destruction, or obliteration. The Lessee shall notify the AO of any relocated, damaged, destroyed, or obliterated markers and shall reestablish the markers at the lessee's expense in accordance with accepted survey practices of the DMLW.
25. **Use and Storage of Fuel:** Section 26 of the Lease document is hereby amended to include the following: All fuel storage container(s) with a total combined capacity larger than **55 gallons** shall not be placed within 100 feet from the ordinary high water mark of any water body. When fuel storage container(s) exceed a total combined capacity of **110 gallons**, the containers must be stored within an Alaska Department of Environmental Conservation (ADEC)-approved double-walled tank, or an impermeable diked area, or a portable impermeable containment structure capable of containing 110% of the capacity of the largest independent container. All containers must be clearly marked with the contents and the Lessee's name and ADL number. Drip pans and materials, such as sorbent pads, must be on hand to contain and clean up all spills.
26. **Notification of Discharge:** The Grantee shall immediately notify the Department of Environmental Conservation (DEC) and AO of any unauthorized discharge of any amount of oil to water, a discharge of any amount of a hazardous substances (other than oil), and any discharge of oil greater than 55 gallons on land. All fires and explosions must also be reported immediately.

If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, the Grantee shall report the discharge within 48 hours. Any discharge of oil greater than one gallon up to 10 gallons, including a cumulative discharge, solely to land, must be reported in writing on a monthly basis.

Notification of discharge must be made to DEC online at ReportSpills.alaska.gov or by phone at 1-800-478-9300.

Notification of discharge must be made to the appropriate DNR Office, preferably by e-mail: Anchorage email dnr.scro.spill@alaska.gov, (907) 269-8528; Fairbanks email

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dnr.nro.spill@alaska.gov, (907) 451-2739; Juneau email dnr.sero.spill@alaska.gov, (907) 465-3513. The Grantee shall supply the AO with all incident reports submitted to DEC.

Should any unlawful discharge, leakage, spillage, emission or pollution of any type occur due to the Lessee's actions or failure to act, the Lessee, at its expense, shall be obligated to clean the area to the reasonable satisfaction of the State of Alaska.

27. **Waste disposal:** On-site refuse disposal is prohibited, unless specifically authorized. All waste generated during operation, maintenance, and termination activities under this authorization shall be removed and disposed of at an off-site ADEC approved disposal facility. Waste, in this paragraph, means all discarded matter, including but not limited to human waste, trash, garbage, refuse, oil drums, petroleum products, ashes and discarded equipment.
28. **Fire Prevention, Protection and Liability:** The lessee shall take all reasonable precautions to prevent and suppress forest, structure, brush and grass fires, and shall assume full liability for any damage to state land and structures resulting from the negligent use of fire. The State is not liable for damage to the Lessee's personal property. To report a wildfire, call 911 or 800-237-3633.
29. **Waiver of Forbearance:** Any failure on the part of the AO to enforce the terms of this authorization, or the waiver of any right under this authorization by the Lessee unless in writing, shall not discharge or invalidate the authorization of such terms. No forbearance or written waiver affects the right of the AO to enforce any terms in the event of any subsequent violations of terms of this authorization.

The receipt of compensation by the AO, with or without knowledge of any default on the part of the Lessee, is not a waiver of any provision of this authorization. The receipt of compensation by the AO after termination or any notice of termination will not reinstate, continue, or extend this authorization, or destroy or in any manner impair the validity of any notice of termination, unless specifically stated by the AO in writing.

30. **Severability Clause:** If any clause or provision of this authorization is, in a final judicial proceeding, determined illegal, invalid, or unenforceable under present or future laws, then the grantor and the Lessee agree that the remainder of this authorization will not be affected, and in lieu of each clause or provision of this authorization that is illegal, invalid, or unenforceable, there will be added as a part of this authorization a clause or provision as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible, to be legal, valid, and enforceable.
31. **Lease Expiration and Site Reclamation:** No later than one (1) year prior to the lease expiration, the Lessee shall file with the Lessor:

- a) A request for a new lease, and/or

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- b) A reclamation plan for the leasehold lands, which must be approved in writing by the AO. The Lessee is responsible for site reclamation within the leasehold.

The reclamation plan must include a description of the methods and techniques that the Lessee will use to rehabilitate all sites affected by construction and intensive use activities. Under the lease, the Lessee retains all ownership rights to site improvements. In the plan, the Lessee shall describe its intention to remove improvements. The plan must also include a schedule that sets forth the steps required for surface rehabilitation, and a specific time line showing when the Lessee will accomplish each step.

32. **Violations:** Pursuant to 11 AAC 96.145, the Lessee must be in compliance with provisions of this and other authorizations granted under AS 38.05 or 11 AAC 96 before a new authorization may be granted by DMLW.
33. **Lease Termination:** This lease authorization may be terminated upon violation of any of its terms, conditions, stipulations or upon failure to comply with any applicable laws, statutes and regulations (state and federal).
34. **Lease Utilization:** Per 11 AAC 58.510, leases must be utilized for purposes within the scope of the lease and the land classification. Utilization or development for other than the allowed uses or failure to substantially utilize or develop the lease is a violation of the lease. A development plan may be required on all leases. Failure to make substantial use of the land, consistent with the development plan, within five years, will, in the director's discretion, constitute grounds for cancellation.
35. **Agents:** The lease provisions and stipulations apply with equal force upon an agent, employee, contractor or subcontractor designated by the Lessee to perform any lease or lease-related operations. The Lessee is liable for noncompliance caused by any such agent, employee, contractor, or subcontractor.
36. **Additional Authorizations or Permits:** If activities other than those authorized by the lease provisions and stipulations are needed, additional written authorizations or permits and their associated additional fees may be required.
37. **Access and Road Construction:** The Lessee is responsible for providing access to the leasehold. Before constructing any road across state land, the Lessee shall obtain prior approval and authorization from DMLW for the location and construction standards of the road.

Attachment C Preliminary Decision

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

PRELIMINARY DECISION

ADL 234089
Copper River Seafoods; Ninilchik
Application for Lease
AS 38.05.070(b)

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 **11:59 PM January 5, 2024**. 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 Land Office (SCRO) has received a request from Copper River Seafoods, Inc (CRS) to lease 0.5 acres of tide and submerged lands, more or less, for 10 years for the purpose of the continued operation and maintenance of a dock in support of CRS's seafood purchasing and processing business located in Ninilchik, Alaska. The location of the project area is further described as being within the SW 1/4 of the SE 1/4 of Section 27, Township 1 South, Range 14 West, Seward Meridian, Alaska. CRS is proposing to use this site for the continuing use and maintenance of an existing dock and staging area for the unloading of fish from moored vessels, packing and transporting fish for off-premises processing, and temporary storage containment. CRS has been operating in the Ninilchik Harbor under a 3-year permit, serialized ADA-08767 with the State of Alaska Department of Transportation and Public Facilities (DOT&PF). The most recent term dates of the permit begin August 20, 2016 and end August 19, 2019.

SCRO is considering the issuance of a 10-year tideland lease to CRS for the construction, operation, and maintenance of its dock.

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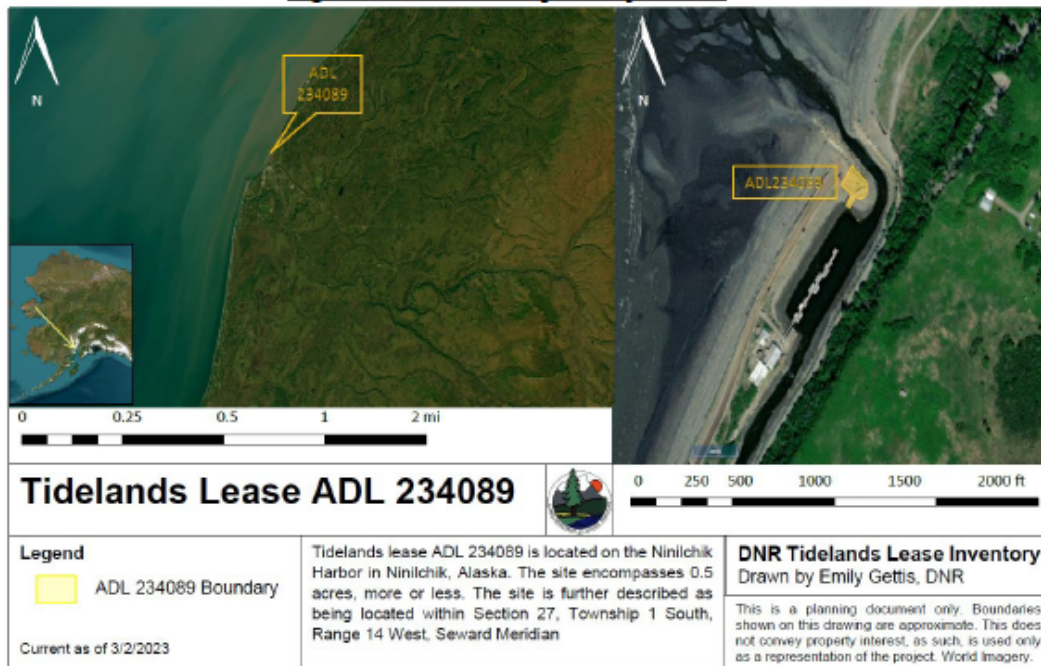
Final Finding and Decision
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Attachment C Preliminary Decision

Scope of Review:

The scope of this decision is to determine if it is in the State's best interest to issue a 10-year tideland lease under AS 38.05.070(c). This review will also reference the ILMA serialized as ADL 222127. The proposed lease will be managed by SCRO within the DOTP&F ILMA and if authorized, ADL 234089 will exist within the ADL 222127 footprint.

Figure 1: Overview Map of Project Area



Authority:

This lease application is being 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; and AS 38.05.945 Notice.

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

Administrative Record:

Case file ADL 234089 constitutes the administrative record for CRS's lease application.

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 herein, the 2000 Kenai Area Plan and other classification references described herein, and the casefile for the application serialized by DNR as ADL 234089.

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Attachment C

Preliminary Decision

Legal Description, Location, and Geographical Features:

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

- **Legal Description:** SW 1/4 of the SE 1/4 of Section 27, Township 1 South, Range 14 West, Seward Meridian
- **Geographical Location:** Ninilchik Harbor in Ninilchik, Alaska
- **Approximate Lat/Long:** 60°3'4.69" N, 151°40'2.86" W
- **Area Geographical Features:** On the east coast of central Cook Inlet, located where the Ninilchik River flows into Cook Inlet, in Ninilchik, Alaska
- **Existing Surveys:** ASLS 860166, USS 3407
- **Municipality/Borough:** Kenai Peninsula Borough
- **Native Corporations/Federally Recognized Tribes:** Cook Inlet Region, Incorporated., and Ninilchik Village
- **Size:** 0.5 acre, more or less

Title:

SCRO requested a title report from DMLW's Realty Services Section on January 6, 2023, which has not been received at the time of this decision. Should the title report note any major changes, they will be addressed in the FFD.

Third-Party Interests:

Third-party interests include the ILMA with DOTP&F serialized as ADL 222127.

Classification and Planning:

The project area is subject to the Kenai Area Plan (KAP), Region 7, Management Unit: Homer, Subunit 67C (map number 7A: Deep Creek). The proposed lease area is designated as Public Facilities - Retain which converts to the classification of Reserved Use Land. The intent for KAP subunit 67C is the development of a small boat harbor, as well as road and water access. CPS support operations and continued maintenance of the dock and processing area will not conflict with the classification and ensure that the unit designation, identified as specific infrastructure that serves state interests, is fulfilled.

While the KAP identifies unit 67C as being managed within an Interagency Land Management Assignment (ILMA) to be managed by DOTPF, DOTPF directed CPS to have their lease authorized under SCRO DMLW.

Traditional Use Findings:

The proposed site is located within the Kenai Peninsula Borough. Pursuant to AS 38.05.830 a traditional use finding is not required.

Access:

Access to the site is via the Sterling Highway to Valley Street in Ninilchik.

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Preliminary Decision

Access Along Navigable and Public Waters:

Nearly all shore and tidelands in the State of Alaska are subject to a To and 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.

CRS has confirmed that this authorization will not restrict public access to the water. CRS requests that the public does not go under the dock when machinery such as the crane is in operation for public safety. In the interest of public safety, CRS has the ability to restrict access during operation as needed. Proposed activity and lease site operations that utilize the crane will occur seasonally, typically from June to August. Public Access Stipulation #19 states that CRS may allow restriction of public access for a specific period of time, but restriction must be specifically authorized in writing by the Authorized Officer (AO). The lessee must contact the AO in advance for approval.

Public Trust Doctrine:

Pursuant to AS 38.05.126, all authorizations for this site 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.

Agency Review:

An agency review was conducted on October 5, 2022. The deadline for agency comments was October 25, 2022.

The following agencies were included in the review:

- DNR DMLW Land Conveyance Section
- DNR DMLW Mining Section
- DNR DMLW Public Access Assertion and Defense Section
- DNR DMLW Realty Services Section
- DNR DMLW Survey Section
- DNR DMLW Water Resources Section
- DNR Division of Agriculture
- DNR Division of Forestry & Fire Protection
- DNR Division of Geological & Geophysical Surveys
- DNR Division of Oil and Gas / State Pipeline Coordinator Service
- DNR Division of Parks and Outdoor Recreation / Office of History and Archaeology – State Historic Preservation Office
- DNR Natural Resource Conservation and Development Board
- Department of Commerce, Community and Economic Development
- Department of Environmental Conservation
- Department of Fish & Game

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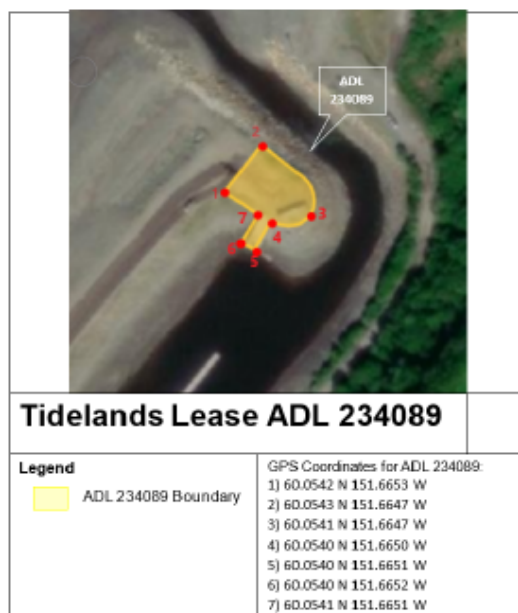
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- Department of Transportation & Public Facilities
- U.S. Army Corps of Engineers
- U.S. Bureau of Land Management
- U.S. Coast Guard
- U.S. Environmental Protection Agency
- U.S. Fish and Wildlife Service
- U.S. National Park Service
- U.S. National Oceanic and Atmospheric Administration - National Marine Fisheries Service

Three comments were received:

Comment: The Department of Transportation and Public Facilities (DOT&PF) submitted a comment on October 19, 2022, that notes the lease application did not include a defined legal description, and therefore, is “likely not sufficient for a DMLW leasing authorization and may present complications for DOT&PF harbor management if authorized as a revocable-for-cause lease.” DOT&PF requests that they be given an opportunity to review ADL 234089 with defined outer boundaries once they are proposed.

Response: SCRO acknowledges the comment from DOT&PF. In accordance with AS 38.04.045, this short-term land lease does not require a survey, and GPS coordinates submitted by the applicant are sufficient. The following seven GPS points were submitted by the applicant which clearly define the site boundaries:



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Attachment C Preliminary Decision

If authorized, the proposed lease will be managed by DNR and exist within the ILMA ADL 222127 currently managed by DOTP&F. To successfully co-manage, SCRO requests that DOTP&F identify and inform SCRO of the specific issues that need to be addressed in order to best mitigate complications with harbor management.

Comment: Public Access Assertion and Defense (PAAD) submitted a comment on October 13, 2022 that reiterated that while this site area has been avulsed, “it is still subject to public trust doctrine” and therefore, available for use by the public. If there are safety concerns with public use the region (SCRO) will need to submit a formal closure document.

Response: SCRO acknowledges this comment and CRS will be informed of this requirement through this PD. CRS has confirmed that this authorization will not restrict daily public access to the water. However, at times the proposed lease operations may pose a public safety concern due to the operation of machinery at the lease site. To maximize public safety and ensure that the public is not in the immediate area of operating machinery, Public Access Stipulation #19 states that CRS may allow restriction of public access for a specific period of time, but restriction must be specifically authorized in writing by the Authorized Officer (AO). The lessee must contact the AO in advance for approval.

Comment: The Alaska Department of Fish and Game (ADF&G) commented on October 25, 2022, that while they have no objections to the issuance of the proposed lease, CRS will need to apply for an ADF&G Fish Habitat Permit if any new activity, changes, or expansion below ordinary high water mark occur.

Response: SCRO acknowledges this comment and CRS will be informed of this requirement through this PD.

Lease Discussion:

On September 14, 2022, SCRO received a completed application and development plan for a land lease serialized ADL 234089 for the purpose of maintaining a pre-existing dock area. The lease site boundary is located at the end of Boat Harbor Road and Airport Lane in Ninilchik, Alaska. The proposed lease site boundary is also located within an ILMA authorized under DOTP&F and serialized ADL 222127. Previously, DOTP&F authorized a permit for CRS’s current operations and dock maintenance. However, DOTP&F and SCRO have determined that CRS’s operations are more appropriately managed by DNR under a short-term 10-year lease. The lease would be processed and exist within the ILMA footprint with no changes to ADL 222127. SCRO has concurrence from DOTP&F that SCRO will authorize and manage the proposed lease.

CRS is an established Alaska based company that harvests, purchases, processes, and delivers local high-quality Alaskan seafood in and out of state. An authorization with SCRO to continue to operate and maintain this dock for the unloading of fish from moored vessels during the salmon

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Preliminary Decision

season will ensure that CRS can carry out its company mission and support its seafood purchasing and processing business.

The existing improvements are described as:

- A 45'x19' dock
- Dock crane powered by a portable generator and hydraulic skid that are removed and stored offsite when not actively in use
- 40'x8' portable metal storage container for onsite storage
- 9,073 square foot graveled staging area

Approximately 4 employees of CRS will operate the dock and unload fish at the site. When the site is in active use during salmon season, trucks will temporarily be at the site to haul unprocessed fish to the CRS processing site (located off the proposed lease site). There is no long-term parking or storage. Maintenance operations and as needed repairs to the dock and crane are occasionally performed by employees or third-party contractors.

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 September 14, 2022, 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. 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 hazardous materials or potential contaminants of note for this leasehold.

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 lease site and disposed of in accordance with state and federal law.

Lease Performance Guaranty (bonding):

In accordance with AS 38.05.035 and AS 38.05.860, CRS will be required to submit a performance guaranty for the lease site.

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- **\$1,000.00 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 and/or substances on site, and the perceived liability to the State. This bond will be used to ensure the applicant'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 in the event of noncompliance issues during the term of the lease or near the end of the life of the project.

Insurance:

CRS will be required to submit proof of liability insurance to SCRO, with the State of Alaska listed as a "NAMED" insured party. CRS will be responsible for maintaining such insurance throughout the term of the lease.

Survey:

In accordance with AS 38.04.045, this short-term land 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 has submitted the necessary GPS coordinate points for the leased area.

Compensation and Appraisal:

A Minimum Rent Determination for this leasehold was completed on May 4, 2023, and the proposed lease annual fee will be set at \$1,000.00. 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 an appraisal is conducted to determine the fair market value of the lease site, the applicant will be required to pay the appraised amount and the \$1,000.00 annual fee will no longer be an option. The appraisal cost will be borne by the applicant. The applicant acknowledges the responsibility to cover the difference between the proposed fee and the final determined fee in the event that the appraised amount is altered. The parcel may need to have an approved Alaska State Land Survey or Alaska Tidelands Survey to accomplish the appraisal. If a survey is required the cost will be incurred by the applicant. The parcel may need to have an approved Alaska State Land Survey or Alaska Tidelands Survey completed to accomplish the appraisal.

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Subleasing:

Subleasing is permissible through AS 38.05.095, if the proposed lease is approved. A sublease is defined as improvements not owned by the lessee that are located within the leasehold on the land or located on structures owned by the lessee. A sublease pertaining to the proposed lease includes but is not limited to, user agreements, license agreements, communication site agreements, or any contracts between the lessee and other commercial entities. 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 making a determination 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 the leaseholder 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 DMLW. 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 DMLW or any other agency authorization. DMLW reserves the right to amend the terms of the lease prior to assignment.

Reclamation:

In accordance with AS 38.05.090(b), all lessees must restore their lease site to a “good and marketable condition” within 120 days after termination of the lease. 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 a 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 Ninilchik, Anchor Point, and Clam Gulch. Courtesy notices will also be mailed or emailed to neighboring property owners, permit/lease holders, and other interested parties on December 5, 2023 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. Pursuant to 11 AAC 02.010(d), DNR is restricting appeal rights to those who meaningfully participate as well as the applicant.

**Written comments about this project must be received in this office no later than
11:59 PM on January 5, 2024 to be considered.**

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Preliminary Decision
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Attachment C Preliminary Decision

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: Emily Gettis
550 West 7th Avenue, Suite 900C
Anchorage, AK 99501-3577
Email: emily.gettis@alaska.gov
Fax: (907) 269-8619

Questions about the lease portion of this project can be directed to Emily Gettis at (907) 269-8619.

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).

Attachment C Preliminary Decision

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 fees for ADL 234089 and an indirect economic benefit through the encouragement and development of the State's resources. The authorization of this lease is in the State's best interest as it will enhance the local economy and continue to provide seasonal employment in Ninilchik. The maintenance and continued use of this small dock harbor ensures that CRS can continue fish processing operations that benefit the surrounding communities and lower 48 with Alaskan goods and services. It is recommended that SCRO issue a 10-year lease to CRS.



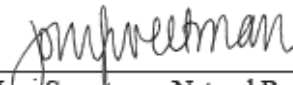
12/04/2023

Emily Gettis, Natural Resource Specialist

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 a Tidelands Lease for 10 years to CRS, as described above. Upon authorization of the lease, the applicant will be required to pay the annual lease fee of \$1,000.00, submit a \$1,000.00 performance bond, and provide proof of liability insurance. This Preliminary Decision shall now proceed to public notice. If no appeal is filed by the appeal deadline, this decision goes into effect on the 31st day after issuance, and the lease term must start within one year of effective date of this decision. However, if the applicant does not submit the required deliverables within one year of the effective date of this decision, the Southcentral Regional Land Office may choose to rescind this decision.



12/04/2023

Joni Sweetman, Natural Resource Manager 2

Date

Division of Mining, Land, and Water, Southcentral Regional Office

Attachments

Attachment A – Development Plan

Attachment B – Location Map

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Attachment D Development Plan



COPPER RIVER SEAFOODS

Main Administrative Office
1118 East 5th Avenue · Anchorage, AK 99501
Phone: (907) 522-7806 · (888) 622-1197 · Fax: (907) 274-0348
www.CopperRiverSeafoods.com

Development Plan Narrative – Project Description

Copper River Seafoods, Inc. has been operating on DNR parcel ID 15709014 under permit (ADA-08767) with the State of Alaska Department of Transportation and Public Facilities for 10 plus years. There are no proposed changes to the past, present or future use of this parcel.

The proposed activity is to continue operation and maintenance of a dock for the unloading of fish from moored vessels during the 1 to 2-month salmon season, packing and transportation of fish for off-premises processing, placement of temporary storage container(s), related vehicle and equipment, all in support of seafood purchasing and processing business. The existing improvements are a 45'x19' dock, dock crane, 40'x8' portable storage container and 9,928 sq ft graveled staging area.

Legal Description:

Parcel B, Ninilchik Harbor, 9,928 sq ft
Meridian Seward, Township 1S, Range 14W, Section 27, Municipality Homer
Recording District

Terrain/ground cover:

Existing graveled surface area at the end of the access road

Access:

Sterling Hwy MP135 to Valley Ave to Airport Ln which is the existing access road

Building and other structures:

There is one 40'x8' metal portable container used for storage onsite

Power source:

There is no power supplied or planned for

Waste types, waste sources, and disposal methods.

Waste is not generated onsite

Hazardous substances:

There is a portable generator and hydraulic skid that powers the dock crane which is removed and stored offsite when not in use

Water supply:

There is no water supplied or planned for

Parking areas and storage areas:

There is no long-term parking or storage. During the salmon season, trucks are onsite temporarily to haul un-processed fish to a processing plant located offsite

Number of people using the site:

Approximately 4 people operate the dock when unloading fish and 1 is a supervisor. Clients do not use the site.

Maintenance and operations:

Occasional maintenance and repairs of the dock and crane are performed by company employees and/or third-party contractors

Closure/reclamation plan:

N/A

CORDOVA PLANT

P.O. Box 158 / 300 Cannery Row · Cordova, AK 99574
Phone: (907) 424-5721 · (888) 622-1187
Fax: (907) 424-7435

ANCHORAGE PLANT

1400 East 1st Avenue · Anchorage, AK 99501

NAKNEK PLANT

0.5 Peninsula Hwy · Nakhik, AK 99833

TOGIAK PLANT

P.O. Box 110 · Togiak, AK 99878