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

Southeast Regional Land Office

Preliminary Decision
ADL 109226
Alaska Oyster Cooperative
Application for Lease
AS 38.05.070(b)

Executive Summary

This Preliminary Decision (PD) is the State's preliminary best interest finding regarding a proposed disposal of interest in state land. The State intends to authorize a 10-year lease to Alaska Oyster Cooperative (AOC) to support local aquatic farms through construction and maintenance of packing facilities, shipping facilities, and retail space as described below. The proposed improvements would also be used in support of an adjacent aquatic farm lease to AOC, ADL 233912. The public is invited to comment on this PD. The deadline for commenting is 5:00 pm March 27, 2024. 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 Alaska Oyster Cooperative ("applicant") applied for a lease on January 5, 2022, to support local aquatic farms through construction, operation, and maintenance of support structures such as: packing facilities, shipping facilities, and retail space in Naukati Bay, Alaska. These improvements would also be used in support of the applicant's adjacent aquatic farm lease, ADL 233912. The total area requested by the applicant is approximately 0.61 acres. A development plan is included as Attachment 1.

Proposed Improvements:

- Gravel access road and parking area extension, ~8000 sq.ft.of gravel
- Two steel shipping container buildings on a gravel pad (for packing rooms, holding cooler, freezing unit, shipping material storage, retail space, and member short term lodging), ~ 40ft x 56ft
- Two steel shipping container buildings (for mobile shellfish nursery), ~40ft x 36ft
- One steel shipping container building (for product holding cooler), ~12 ft x 20ft
- Two mobile storage buildings (for construction efforts, only to remain during the Entry Authorization), ~12ft x 20ft

Existing Improvements:

- Bulkhead for floating dock gangway, ~10ft by 10ft
- Gravel access road from road system, ~ 20ft by 130ft

Proposed Action

The Division of Mining, Land & Water (DMLW) proposes to issue a 10-year lease to the applicant for the requested construction, operation, and maintenance of the aquatic farm support structures, as described within this decision and outlined in the lease development plan (Attachment 1).

Scope of Decision
The scope of this decision is limited to the determination of whether it is in the State's best interest to issue a 10-year lease to the applicant. The administrative review for this authorization is defined by AS 38.05.035(e)(1)–(2) and is limited to (1) reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and regulations; (3) facts pertaining to the land or resources; and (4) issues that are material to the determination.

Authority
This lease application is adjudicated pursuant to AS 38.05.035(b)(1) and AS 38.05.035(e) Powers and Duties of the Director, AS 38.05.070 Generally, AS 38.05.075 Leasing Procedures, and AS 38.05.945 Notice. The authority to execute the 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 Prince of Wales Island Area Plan (POWIAP) and other classification references described herein, and the related casefiles serialized by DNR as ADL 109226 and ADL 233912.

Location Information

Geographic Location:
The proposed site is located in Little Naukati Bay, Alaska on Prince of Wales Island.

Property Description:
The proposed lease is located within Section 19, Township 69 South, Range 80 East, Copper River Meridian and more particularly on upland Lot 9. The proposed leasehold contains approximately 0.61 acres, more or less.

Other Land Information:
Municipality: None
Regional Corporation: Sealaska Corporation
Village Corporation: Klawock Heenya Corporation
Federally Recognized Tribe: Klawock Cooperative Association

Approximate Coordinate Locations (NAD 83):
NE Corner: 55° 52.475'N, 133° 12.999'W
SE Corner: 55° 52.450'N, 133° 12.998'W
SW Corner: 55° 52.450'N, 133° 13.079'W

NW Corner 1: 55° 52.462'N, 133° 13.064'W
Corner No. 4: 55° 52.462'N, 133° 13.030'W
NW Corner 2: 55° 52.475'N, 133° 13.030'W

Title
The State of Alaska holds fee title to the subject land under U. S. Patent No. 50-2009-0128 dated February 2, 2009. A DNR Title Report RPT- 23342 issued on November 27, 2023 from DMLW's Realty Services Section attests that aside from the usual reservations for ditches, canals, railroads, telegraph and telephone lines, and water rights, there are no other reservations within the proposed leasehold.

Adjacent Landowners
The proposed leasehold is surrounded by state-selected and tentatively approved or patented land.

Third Party Interests
No third-party interests are known at this time.

Planning and Classification
The proposed activity is consistent with the Prince of Wales Island Area Plan (POWIAP.) Located in Management Unit 7-Sea Otter Sound, Subunit 7c-Naukati. The proposed lease site is still listed as a "USFS Admin. Site" in the POWIAP because the area plan was created in 2008, prior to the patent listing the proposed site as state-owned land.

"State uplands will be managed for multiple use. State uplands will be managed to meet the needs of a developing community, including residential, commercial, public services, and community recreational needs." (POWIAP 3, 113)

Naukati has long served as a water access point for Sea Otter Sound and surrounding waters and is the main road-to-water access point from Prince of Wales Island. (POWIAP 3, 113)

According to the POWIAP, in situations where the state has further acquired isolated parcels of land through other methods, parcels adjoining or surrounded by other state land should be managed according to the management intent and guidelines applicable to those adjacent lands. (POWIAP 2, 21)

For the proposed lease site, adjacent sections to the east are designated Rd (Public Recreation – Developed) and S (Settlement). The adjacent section to the south is designated P (Public Facilities), Rc (Recreation – Commercial), Rd (Public Recreation – Developed), and S (Settlement). The POWIAP also references other portions of the USFS administrative site that were relinquished to the state for community boat launching, docking, and associated upland parking because the area is the most viable boat launch and water access point to Sea Otter Sound. "Use of the site for water-related activities is essential. Design may include limited water-related com-

mercial/community activities and parking for boat access and marine development." (POWIAP 3, 117)

The activities proposed by AOC will be meeting and promoting settlement guidelines within the area by providing access, space, and facilities necessary to expand the growing mariculture industry in Naukati Bay. Because of the for-profit cooperative nature of AOC, authorizing this use meets commercial intent of the area while also providing public services and contributing to the developing community.

In comparing nearby designations, reviewing area-wide land management policies, and applying the overall management intent and guidelines of Subunit 7c-Naukati, DMLW finds the proposed activity consistent with the POWIAP.

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

Access
The main physical and legal access to the proposed lease site is via an existing gravel road across Unites States Forest Service (USFS) land that extends from the nearby National Forest System Road (NFSR)-2060 to the proposed site. The current USFS District Ranger provided a letter of non-objection to AOC for use and maintenance of the approximately 180-foot stretch of gravel access road on August 10, 2023. The proposed site is also accessible via the tideland through the proposed pier and gangway by boat or floatplane.

Access Along Public Waters:
The site is located adjacent to Little Naukati Bay. Pursuant to AS 38.05.126, 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 and landward of the line of mean high water.

Public Trust Doctrine
Pursuant to AS 38.05.126, the proposed lease will be subject to the principles of the Public Trust Doctrine; specifically, the right of the public to use navigable waterways and the land beneath them for: navigation, commerce, fishing, hunting, protection of areas for ecological studies, and other purposes. These rights must be protected to the maximum extent practicable while

allowing for the development of this project. As such, 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
Mineral Closing Order No. 739 closes to locatable mineral entry all state and state selected land within the leasehold.

Hazardous Materials and Potential Contaminants
Gasoline and small quantities of motor oil for vehicle operations will be stored within the proposed leasehold. AOC states that fuel storage will be of approximately 100 gallons in non-permanent tanks with spill catch basins and will be kept in a temporary storage structure located over 100 feet from the nearest waterbody. All solid waste produced will be consolidated and transported to approved landfill or waste disposal locations.

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 February 10, 2023. The deadline for agency comments was March 13, 2023.

The following agencies were included in the review:

- ADF&G – Wildlife Conservation Division
- ADF&G – Habitat Division
- ADF&G-Commercial Fisheries Division
- DEC – Commissioners Office
- DEC – Water Plan Review Section Manager
- DNR DMLW OHA – Review & Compliance
- DNR DMLW SAIL – Statewide Abatement of Impaired Lands
- DOT&PF – Statewide ROW Chief

Agency Review Comment and Response:

ADF&G Comments:
1. "If this lease is issued, any culture of aquatic organisms for aquatic farming purposes (#6 above) will need to be permitted through an Aquatic Farm Operation Permit. An aquatic farm operation permit has been applied for through the joint agency application (ADL 233912) and if issued first, it would need to be amended to include activities listed in this application and subject to conditions listed in the permit. The applicant should contact the ADF&G Aquatic Farming Program at dfg.dcf.aquaticfarming@alaska.gov with any questions."

2. "The project area is adjacent to marine habitat used by multiple marine mammal species for foraging and travel. While construction activities may temporarily displace animals occurring in the area, any impacts would be temporary. There are no nearby pinniped haulouts, designated critical habitat areas, or known biologically important area for cetaceans."

DMLW Response:
As discussed, ADF&G will be provided with a copy of the preliminary decision of ADL 109226 to make any necessary amendments to the related Aquatic Farm Operation Permit.

Background
DMLW originally received an application from AOC on January 5, 2022. On January 26, 2022, the application was deemed complete by the original adjudicator. DMLW began active adjudication on the application on February 1, 2023, after staffing delays necessitated a new adjudicator be assigned the case. Since significant time had passed since the original application was submitted, the adjudicator requested any updates to the development plan. On November 6, 2023, DMLW received final updates to the development plan as listed in the "proposed improvements" above and attached to this decision.

Discussion
AOC is a for-profit cooperative that is seeking to support both aquatic farm members and the local community by providing regional economic development opportunities through the improvements proposed in ADL 109226. Members of the cooperative are local aquatic farmers that mainly grow and sell oysters. All products being produced in this area are currently being offloaded and transported from vessels by hand through the Naukati public dock. This has created development hurdles for local farmers due to the lack of proper hoist systems, vehicle access, and other support structures.

AOC has also requested an aquatic farm lease, ADL 233912, that proposes to allow the cultivation of juvenile Pacific oysters as well as a dock and pier structure to extend from the upland parcel where ADL 109226 is proposed. The concurrent authorization of both leases

would allow access that provides both improved efficiency and safety to the daily operations conducted by AOC members.

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

Development Plan
An updated Development Plan (DP) was received by DMLW on November 6, 2023 and is attached to this decision (Attachment 1). 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's entry onto state land through the issuance of an Entry Authorization (EA) to allow site development and conduct the required appraisal, 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. The EA is included in this decision as Attachment 3.

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:

> **$10.000 Performance Bond:**
> Performance guaranties provide a means to pay for corrective action if the lessee fails to comply with the lease requirements. In accordance with AS 38.05.035(a)(4), the applicant will be required to submit a performance guaranty. The amount of the performance guaranty is based on the scope and the nature of the activity and the potential cost of restoring the site. Performance guaranties are subject to periodic adjustments during the term of the authorization to address increases or decreases in the costs of rectifying problems and rehabilitating state land due to inflation, changes in the level or nature of development, or other appropriate factors.
>
> The amount of the performance guaranty would previously have been $100,000. However, following recent DMLW guidance on determining the performance guaranty amount, this figure represents a maximum bonding amount. Given the security provided by the

applicant's compliance with DMLW, the low environmental impacts expected, and the potential economic benefits of the proposed improvements, DMLW will impose 10% of the maximum bonding amount. This percentage is also consistent with the performance guaranty imposed for the adjacent aquatic farm lease. Therefore, the applicant will be required to submit a performance guaranty in the amount of $10,000.

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

Survey
In accordance with AS 38.04.045, this lease does not require a survey. However, the State of Alaska reserves the right to require one in the future, should the need arise due to changes in statutes or increased use of the area. AOC has submitted a scaled diagram with GPS coordinate points for the six corners of the proposed leasehold.

Appraisal
In consultation with DMLW Appraisals Unit and in accordance with AS 38.05.840(a), it was determined that an appraisal is required. The applicant must provide a fair market value appraisal of the proposed leasehold prepared by a licensed appraiser approved by the Appraisals Unit. The cost of the appraisal shall be borne by the Applicant.

Compensation

Annual Land Use Fees:
The annual land use fee shall be the minimum lease fee of $1,000.00 as established in 11 AAC 58.410(b) until a fair market value appraisal has been completed. Once the appraisal has been completed and fair market value rent for the subject parcel has been determined, if the amount is less than $1,000 per annum the annual fee shall remain at $1,000 in accordance with 11 AAC 58.410(b). However, if it is determined from the appraisal that the fair market value for the subject parcel is greater than the minimum land use fee, then the annual land use fee will be adjusted to reflect this amount from the effective date of the lease. Additionally, AOC will be responsible for the payment of any difference from payments made during the term of the Entry Authorization.

For information on general appraisal requirements and acceptable appraisers, contact the Chief Review Appraiser at:

Department of Natural Resources

Division of Mining, Land & Water
550 West 7th Ave., Suite 1050-A
Anchorage, AK 99501-3579
Phone: 907-269-8512
Fax: 907-269-8914

Periodic Rate Adjustment:
In accordance with AS 38.05.105, the annual land use fee payment will be subject to adjustment at five-year intervals after the issuance of the lease.

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 February 27, 2024. 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 March 27, 2024 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 a 10-year lease to the applicant authorizing the requested construction, operation, and maintenance of the proposed aquatic farm support structures. 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 — 02/26/2024

Laurel Smith, Natural Resources Specialist — Date

Unit Manager Concurrence

Mason Auger — 2/26/2024

Mason Auger, Natural Resources Manager — Date

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

Kaitlyn Raffier — 2/26/2024

Kaitlyn Raffier, Southeast Regional Manager — Date

ATTACHMENTS:

Attachment 1. Development Diagram
Attachment 2. Standard Lease Agreement and Special Stipulations
Attachment 3. Entry Authorization