

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

Southeast Regional Land Office

**Preliminary Decision**

**ADL 106340**

**Tanaku Lodge, LLC.**

Application for Lease

AS 38.05.070(c)

**Executive Summary**

This Preliminary Decision (PD) is the State’s preliminary best interest finding regarding a proposed disposal of interest in state land. The public is invited to comment on this PD. The deadline for commenting is 5:00 pm, December 4<sup>th</sup>, 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**

Tanaku Lodge, LLC., (“Tanaku Lodge” or “applicant”) applied for a 10-year lease on January 31<sup>st</sup>, 2024.

The applicant applied for the continued use of state-owned tide and submerged lands located on approximately 0.13 acres in Elfin Cove, Alaska. The purpose of this application is for the continuation of use which includes accessing both the lodge and water from the floating dock and gangway, as well as moorage of fishing vessels used by the commercial fishing charter/lodge. No floatplane moorage is authorized under this lease.

The lease area is comprised of approximately 0.13 acres of state-owned tide and submerged lands, adjacent to private lots owned by the owners and operators of Tanaku Lodge, on the northwestern end of Chichagof Island, approximately 900-feet south of the Elfin Cove Seaplane Base. Elfin Cove is approximately 87.5 miles northwest of Sitka, Alaska.

Tanaku Lodge is located on adjacent private lots, extending to the lease boundary which contains the gangway and floating dock secured with steel pilings. There are no other improvements within the leasehold area.

**Proposed Improvements:**

- None

**Existing (if any) Improvements:**

- 6-foot x 50-foot wooden approach pier with four timber support beams
- 4-foot x 40-foot aluminum gangway
- 8-foot x 128-foot wooden floating dock with five steel pilings
- 14-foot x 20-foot wooden floating dock for fishing vessel moorage

### **Proposed Action**

The Division of Mining, Land & Water (DMLW) proposes to issue a 10-year lease to the applicant for the continued use of a gangway and floating dock for access and moorage of lodge fishing vessels; contingent on comments received during Agency Review and Public Notice.

### **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 non-competitive 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), AS 38.05.070-075 and AS 38.05.945. The authority to execute the PD, Final Finding and Decision (FFD), Entry Authorization (EA), and the lease has been delegated to the Regional Managers and 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 *Northern Southeast Area Plan – October 2002* (NSEAP) and other classification references described herein, and the casefile for the application serialized by DNR as ADL 106340.

### **Location Information**

#### **Geographic Location:**

The parcel is located in Elfin Cove, Alaska, on the northwestern tip of Chichagof Island, approximately 900-feet south of the Elfin Cove Seaplane Base. The proposed site on state-owned tide and submerged lands.

#### **Property Description:**

The lease area is located adjacent to Lot 62A as seen on US Survey (USS) 2955 and Plat 97-18 Sitka Recording District, within Section 25, Township 42 South, Range 55 East, Copper River Meridian. The leasehold contains approximately 0.13 acres more or less. The lease area can be seen on As-built drawn diagram labeled "Timber Dock and Approach in Elfin Cove" prepared by Toner-Nordling & Associates, Inc., revised by Jim Benton 1/4/2011.

#### **Other Land Information:**

Municipality: Hoonah-Angoon Census Area  
Regional Corporation: Sealaska Corporation  
Village Corporation: N/A  
Federally Recognized Tribe: N/A

**Title**

The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying Elfin Cove in the section(s) referenced above, on the basis of the Equal Footing Doctrine, the Submerged Lands Act of 1953 and AS 38.04.062 (Identification of State Submerged Lands). A DNR Title Report RPT-23722 was requested on September 16<sup>th</sup>, 2024, from DMLW's Realty Services Section. A Title Report issued from Realty Services Section will state whether the State of Alaska holds title to the subject tidelands under the Equal Footing Doctrine and Submerged Lands Act of 1953. The Southeast Regional Office reserves the right to modify the Final Finding and Decision based upon the information contained in the Title Report upon completion.

**Adjacent Landowners**

The following landowners will be notified of the continued use of the lease area during Public Notice:

Jeff Carpenter, Tyler Pitts, Joseph Kulavik, Northern Star Lodge, Cross Sound Marketing Association, Inc., Robert Koski, Fishmaster's Inn, Kelly Crump, and the US Post Office - Elfin Cove.

**Third Party Interests**

- None

**Planning and Classification**

The proposed activity is consistent with the *Northern Southeast Area Plan* – October 2002 (NSEAP). As seen on map “Chichagof Island Area, Elfin Cove Detail” (NSEAP 3-289). Elfin Cove is located in Management Unit CT-009 – Elfin Cove. The designated land unit is Waterfront Development (Wd) and Shoreline Use (Sd), which converts to “Waterfront development land” and “Settlement lands” as the land classifications.

**Management Intent**

“Tidelands are to be managed for intensive use and are designated Waterfront Development (Wd) in SW ¼ of Section 25. Limited tidelands use (primarily docks) is appropriate in the remainder of Elfin Cove (SE1/4 sec 25 and 36) and is designated Sd.” (NSEAP 3-326)

**Resources and Uses**

“This unit lies adjacent to the city of Elfin Cove. Intensive tidelands use tends to predominate adjacent to lodges, public docks and other marine related structures in the northern part of Elfin Cove. The remainder of Elfin cove is used for low intensity residential uses. Many structures are sited “above” the cove on its eastern side along a state boardwalk. Because of the positioning of these structures (some distance from the Cove and above it) very limited tideland development should be expected in these areas. Development authorization should be limited to the smallest practicable area given the small size of the cove and the need to retain the residential, low intensity use characteristic of its southern part.

Commercial harvest of red King and tanner crab occur in this area. Significant harvest of demersal shelf rockfish, lingcod, pollock, sablefish, Pacific Cod, flounder, and other rock and ground fish are commercially harvested in statistical area 365804 which is located in this unit. A state-owned seaplane base is located in the outer harbor.” (NSEAP 3-326)

### **Other Resources**

“Composed of mixed sand beaches, intertidal marshes, and sheltered impermeable rocky shores.” (NSEAP 3-326)

11 AAC 55.202. Settlement Land. An upland area classified settlement is land that is, by reason of its physical qualities and location, suitable for year-round or seasonal residential or private recreational use or for commercial or industrial development. Tidelands are to be managed to support those existing or proposed upland settlement uses. (NSEAP 4-3)

11 AAC 55.215. Waterfront Development Land. Land classified waterfront development is tideland, submerged land, or shoreland that is suitable to be used for commercial or industrial activities such as fish processing, aquatic farming, mineral and log transfer facilities, or commercial recreation.

## **Settlement**

### **Goals**

Private Land Use. Provide suitable public land for private settlement purposes...

1. “Year-round residences for community expansion. DNR will offer accessible land suitable to meet the needs of existing communities. This category serves people whose principal place of residence and work is, or will be, in the area of the disposal. It also includes land disposals of commercial and industrial land to accommodate the expansion needs of communities. This land will be provided as demand warrants, subject to the availability of funding.”
2. “Seasonal residences for recreation. DNR will offer land suitable for seasonal recreation use. This land will be provided as demand warrants, subject to the availability of funding. This category of land disposal is intended to provide land, often in remote locations, for recreational needs. No public facilities and services are intended to be provided.”
3. “Industrial or commercial development. DNR will sell, lease, or protect for future use suitable land for private commercial and industrial uses. If DNR sells the land, the timing of this disposal will depend on market demand and adequate funding.”

“Community, Social, and Aesthetic Values. In designing future disposals, DNR will maintain compatibility with the cultural lifestyle and aesthetic values of residents and users, and minimize undesired impacts on those values.”

“Fiscal Impacts. Land disposals should be sited and planned to minimize the costs of infrastructure and other services resulting from settlement. Disposals should be focused on areas where organized communities exist and where service requirements may be provided by local government or community organizations.” (NSEAP 2-38)

Settlement: Provide opportunities for private ownership and leasing of land currently owned by the state. (NSEAP 2-2)

**Sd – Shoreline Use.** This designation applies to areas of state tidelands or submerged lands where water-related or water-dependent facilities for personal use by the owner of an adjacent upland site may be authorized. Facilities may include small docks, boat ramps, mooring buoys, or other facilities for personal, non-commercial use. Development for commercial or industrial use will be determined on a site-specific basis. An authorized shoreline facility is considered the private property of the owner who built or maintains it, but this private property right does not extend to the surrounding tidelands, submerged lands, or waters. This land may be available for conveyance to municipalities under AS 38.05.820 and AS 38.05.825... (NSEAP 3-4&5)

**Wd – Waterfront Development.** Use of tidelands, submerged lands, or shorelands for water-dependent or water-related facilities, usually for industrial or commercial purposes. Waterfront development includes: piers, wharves, harbors, mineral transfer facilities, seafood processing facilities, commercial recreation facilities, and other resource development support facilities except for activities related to forestry, which is covered by the Forestry designation... This land may be available for conveyance to municipalities under AS 38.05.820 and AS 38.05.825 but cannot be sold to individuals. (NSEAP 3-5)

**Tidelands, Submerged Lands, and Shorelands.** “DNR will provide reasonable access across state tidelands to upland owners. Upland access across state tidelands, including developed access facilities, may be allowed within all land use designations where DNR determines the proposed facilities are consistent with the management intent and applicable guidelines of the plan. However, state tideland use designations do not give the public access rights to adjacent private uplands.” (NSEAP 3-6)

Per the NSEAP, the proposed continued activity is allowed. Tideland and submerged lands will continue to be used for access to and from the water, and access for lodge members and employees to access Tanaku Lodge. The proposed area is consistent with the designated land uses in the area which include Waterfront Development (Wd) and Shoreline Use (Sd).

### **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**

Physical and legal access to the lease site is through the applicant's upland parcel. Tanaku Lodge owners and operators own the upland parcel(s) (Lot 62-A as seen on USS 2955) adjacent to the dock and will continue to access the lease area via their upland parcel.

### **Access Along Public Waters:**

The site is located on state owned tidelands and submerged lands of Elfin Cove. Pursuant to AS 38.05.126(a), the public has a constitutional right to free access to, and use of, navigable or public waters of the State of Alaska. Under 11 AAC 51.045 and AS 38.05.127, DMLW is required to reserve specific public-access easements to and along these waters. The disposal of state interest is subject to a 50-foot public access easement seaward of the line of mean high water as shown on As-built drawn diagram labeled "Timber Dock and Approach in Elfin Cove" prepared by Toner-Nordling & Associates, Inc., revised by Jim Benton 1/4/2011.

### **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.

### **Mineral Orders**

The proposed leasehold does not fall within the areas delineated in an Administrative Mineral Closing Order (MCO). Neither an MCO nor a leasehold location order is necessary or appropriate for this lease.

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

Hazardous materials, specifically fuel, motor oil, power generators, human waste, trash, gray water, will not be stored within the proposed leasehold. If there is any use and/or storage of any hazardous substances, they must be done in accordance with existing federal, state, and local laws; and must be approved by DMLW before proceeding. 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. There is no known fuel storage or dispensing, or hazardous substances being stored within the leasehold area.

### **Agency Review**

An agency review was conducted on September 16<sup>th</sup>, 2024. The deadline for agency comments was October 16<sup>th</sup>, 2024.

The following agencies were included in the review:

- Alaska Association of Conservation Districts (AACD)
- Alaska Department of Fish and Game (ADFG) – Habitat Division and Access Defense Program
- Alaska Department of Environmental Conservation (DEC) – Commissioners Office, Directors Office, and Division of Water
- Alaska Department of Natural Resources (DNR) – Division of Mining, Land and Water (DMLW) – Directors Office and Water Section
- Alaska Department of Parks and Outdoor Recreation (DPOR) – Office of History and Archaeology (OHA)
- Alaska Department of Transportation and Public Facilities (DOT&PF)

**Agency Review Comment and Response:**

**DMLW – Water Section**

**Summary:** Based upon the information available it appears that there will not be any significant water use per AS 46.15.180 and 11 AAC 93.035 associated with this application that would require authorization from the Department. Please advise the applicant that if there is to be any significant use of water associated with the activities outlined within the ADL 106340 Application, then a water use authorization will need to be applied for through ADNR Water Resources Section.

Under AS 46.15.180 a person may not construct works for an appropriation, or divert, impound, withdraw, or use a significant amount of water from any source without a permit, certificate of appropriation, or authorization.

Per 11 AAC 93.035 a significant amount of water is defined as any amount of consumptive water use greater than 5,000 gallons from a single source in a single day; or the regular daily or recurring consumptive use of more than 500 gallons per day from a single source for more than 10 days per calendar year; or the non-consumptive use of more than 30,000 gallons per day from a single source; or any water use that may adversely affect the water rights of other appropriators or the public interest.

**DMLW Response:** Thanked Water Section for their comment and the information will be given to the applicant.

**ADFG – Access Defense Program**

**Summary:** ADFG has no objection to the issuance of this lease; however, offer the following comments and recommendations:

1. We continue to request that fuel is not stored on the docks.
2. The activity at the docks should not interfere with public use of state waters for recreation, fishing, or access.
3. We advise keeping lines taut and out of the water, when possible, to prevent entanglement risks to humpback whales, seals, and sea lions.

**DMLW Response:** Thanked ADFG for their comment and the information will be given to the applicant.

## **Background**

- Application for 10-year lease was submitted for the dock and associated structures for Tanaku Lodge – February 18<sup>th</sup>, 1997
- 10-year lease is issued for Tanaku Lodge – March 11<sup>th</sup>, 1998
- Application received to renew lease – March 26<sup>th</sup>, 2010
- Final Decision is signed – June 27<sup>th</sup>, 2014
- 10-year lease is approved – September 12<sup>th</sup>, 2014 (backdated for March 11<sup>th</sup>, 2014)
- Lease is amended to add one piling and two more floating docks – December 9<sup>th</sup>, 2022
- Application is received to continue use of lease site – January 31<sup>st</sup>, 2024
- Adjudication process begins – September 16<sup>th</sup>, 2024

## **Discussion**

Tanaku Lodge owners and guests have utilized the floating dock and associated structures to moor fishing vessels and access both the lodge and water since 1997. A 6-foot x 50-foot “approach pier” with four timber support beams is connected to the lodge, which leads to a 4-foot x 40-foot aluminum gangway, and extends to the 8-foot x 128-foot floating dock supported by five steel pilings. Fishing vessels are moored at the floating dock and provide access to Elfin Cove uplands.

The Elfin Cove Fuel Dock is located directly east across the Cove from Tanaku Lodge. There is no re-fueling that happens at the Tanaku Lodge dock, and no fuel is stored within the leasehold boundary. No seaplane moorage is permitted at this site, and if needed in the future, must be approved by DMLW before use occurs.

The dock and associated structures have been a vital part of the Tanaku Lodge operations for 26 years. The applicants are in good standing with the State of Alaska and have had no reported issues with land use, hazards, and/or contamination of state land.

Issuing this authorization and allowing the improvements to remain on site provides for appropriate long-term access and support structures provide necessary access to uplands and water. Continuing the allowable use of the dock and associated structures will leave future commercial opportunities open for this site. There is low environmental impact associated with this authorization and continues to be a vital part of the lodge operation, and access to the uplands of Elfin Cove.

The continuation of use aligns with the NSEAP guidelines that are outlined within the relevant chapters to this area. This lease will provide economic benefit to the state in the form of fees and is considered to be in the best interest of the state.

The lease shall be subject to the standard DMLW Lease Agreement, Special Stipulations and the terms and conditions set forth therein (Attachment A). The development plan (Attachment B) shows all structures and dimensions approved under this lease.



## **Development Plan**

The Development Plan (DP) attached to this decision (Attachment B) and dated January 4<sup>th</sup>, 2011, is accepted by DMLW. Should the proposed lease be granted, it is anticipated that the DP will need to be updated throughout the life of the lease as activities and/or infrastructure are added or subtracted. All updates must be approved, in writing, by DMLW before any construction, deconstruction, replacement of infrastructure, or change in activity will be authorized. DMLW reserves the right to require additional agency review and/or public notice for changes that are deemed by DMLW to be beyond the scope of this decision.

## **Performance Guaranty**

In accordance with AS 38.05.035, AS 38.05.860, and 11 AAC 96.060(a) Performance Guaranty, the applicant will be required to submit performance guaranties for the lease to incentivize performance of the conditions of the lease. This provides a mechanism for the state to ensure that the lessee shares any financial costs associated with noncompliance of the lease agreement for site cleanup, restoration, and any associated costs after termination or expiration of the leases. The following bonds will be required:

### **\$10,400.00 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 is 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.

A Certificate of Deposit (CD) was submitted to DMLW on July 9<sup>th</sup>, 2014, in the amount of \$10,400.00 under account #72012802388288 with Key Bank. The CD is automatically renewed through Key Bank and is valid with the State of Alaska. No new performance guaranty amount is needed at this time. If large-scale improvements are proposed and approved, a new guaranty amount will be required. DNR-DMLW reserves the right to require an updated amount relating to new improvements made on state land.

## **Insurance**

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

## **Survey**

In accordance with AS 38.04.045, this lease does not require a survey. However, the State of Alaska reserves the right to require one in the future, should the need arise due to changes in statutes or increased use of the area. The applicant will be required to submit a scaled diagram with GPS coordinate points for all leasehold corners. Remittance of an approved diagram will be required before the lease may be issued.

If any fill is proposed to be placed on state tidelands, the line of mean high water must be determined by a survey, consistent with 11 AAC 96.040(d). This pre-construction survey must be conducted in accordance with instructions from DMLW Surveys Section.

The total area requested by the applicant is approximately 0.13 acres. A survey for a 10-year lease is not required, however, DMLW reserves the right to require a survey if the need arises. The As-built drawn diagram labeled "Timber Dock and Approach in Elfin Cove" prepared by Toner-Nordling & Associates, Inc., revised by Jim Benton 1/4/2011, shows all improvements, approximate measurements, and 50-foot public access easement associated with this lease authorization and is accepted by DMLW.

## **Appraisal**

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

## **Compensation**

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

Pursuant to 11 AAC 58.410(b), AS 38.05.075(f) and AS 38.05.840(b), and the Minimum Rent Determination by the Appraisals Unit, the annual land use fee will be \$1,000.00.

### **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 November 4th, 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 December 4<sup>th</sup>, 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 Regional Office  
ATTN: *Quinn McClurg*  
PO Box 111020  
Juneau, AK 99811-1020

Email: [quinlan.mcclurg@alaska.gov](mailto:quinlan.mcclurg@alaska.gov)

Questions about the lease portion of this project can be directed to *Quinn McClurg* at (907) 465-3432.

**Adjudicator Recommendation**

Based on the information provided by the applicant and other agencies, as well as review of planning documents, statutes, and regulations, I recommend approving a 10-year lease to the applicant authorizing the applicant to continue use of the floating dock and associated structures for Tanaku Lodge within the leasehold boundary. 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.

Quinn McClurg  
Quinn McClurg, Natural Resources Specialist III

11/04/2024  
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.

Mason Auger  
Mason Auger, Natural Resource Manager II

11/4/2024  
Date

ATTACHMENTS:

- Attachment A: Standard Lease Agreement and Special Stipulations
- Attachment B: As-built survey/development diagram