

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

Southeast Regional Land Office



**Preliminary Decision**

**ADL 109150**

**Naukati Bay Inc.**

Application for Lease

AS 38.05.810(b-d)

**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 public and charitable lease to Naukati Bay Inc. for construction and maintenance of multiple floats for moorage and equipment storage within Naukati Bay, Alaska. The public is invited to comment on this PD. The deadline for commenting is 5:00 pm June 13, 2025. 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**

Naukati Bay Inc. (“applicant”) applied for a lease on November 10, 2024 to construct and maintain multiple floats for moorage and equipment storage within Naukati Bay, Alaska. This lease will update and replace structures and operations that were previously used for aquatic farming operations under ADL 106994. The lease area requested by the applicant corresponds with the original boundaries of ADL 106994 and contains approximately 0.93 acres. A development plan is included as Attachment 1 to show the area and proposed structures.

**Existing Improvements:**

- 1 7’x70’ aluminum ramp
- 2 20’x20’ wooden floats
- 1 4’x120’ log breakwater
- 1 wooden piling

**Proposed Improvements:**

- 3 10’x20’ aluminum floats
- 1 26’x30’ float with storage shed

**Proposed Action**

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

## **Scope of Decision**

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

## **Authority**

This lease application is adjudicated pursuant to AS 38.05.035(b)(1) and AS 38.05.035(e) Powers and Duties of the Director, AS 38.05.070 Generally, AS 38.05.075 Leasing Procedures AS 38.05.810 Public and Charitable Use, and AS 38.05.945 Notice. The authority to execute the PD, Final Finding and Decision (FFD), 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, 1998 (POWIAP) and other classification references described herein, and the casefile for the application serialized by DNR as ADL 109150 as well as associated casefile ADL 106994.

## **Location Information**

### **Geographic Location:**

The parcel is located on state tide and submerged land on a navigable body of water within the Tuxekan Narrows. The parcel is located off Tahka Point, in Naukati Bay, Alaska, on Prince of Wales Island.

### **Property Description:**

The log breakwater portion of the leasehold is located within Copper River Meridian, Township 69 South, Range 79 East, Section 24, while the dock complex portion is located within Copper River Meridian, Township 69 South, Range 80 East, Section 19. The proposed lease hold contains approximately 0.93 acres, more or less.

### **Approximate Coordinate Locations (NAD 83):**

#### **Dock Complex**

NE Corner: 55°52.198' N, 133°13.014' W

SE Corner: 55°52.183' N, 133°13.004' W

SW Corner: 55°52.168' N, 133°13.055' W

NW Corner: 55°52.193' N, 133°13.077' W

#### **Log Breakwater**

SE End: 55°52.126' N, 133°13.090' W

NW End: 55°52.139' N, 133°13.117' W

**Other Land Information:**

Municipality: None

Regional Corporation: Sealaska Corporation

Nearest Village Corporation: Klawock Heenya Corporation

Nearest Federally Recognized Tribe: Klawock Cooperative Association

**Title**

The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying Tuxekan Narrows in the section(s) referenced above, on the basis of the Equal Footing Doctrine, the Submerged Lands Act of 1953 and AS 38.04.062 (Identification of State Submerged Lands).

**Adjacent Landowners**

The State of Alaska owns the adjacent uplands via Patent 50-2009-0128.

**Third Party Interests**

No third-party interests are known at this time.

**Planning and Classification**

The proposed activity is located in Management Unit 7 – Sea Otter Sound, Subunit 7c - Naukati. The proposed use area is designated as Shoreline Development – Commercial/Industrial (D), Public Facilities (P), Public Recreation-Anchorage (Ra), and Public Recreation-Developed (Rd). These designations convert to settlement land, reserved use land, and public recreation land (POWIAP 4, 8).

According to the POWIAP definitions, settlement is defined as the “sale, leasing, or permitting of state lands to allow private recreational, residential, commercial, industrial, or community use” while recreation is defined as “any activity or structure for recreational purposes, including but not limited to hiking, camping, boating, anchorage, access points to hunting and fishing areas, and sightseeing.”

“State tidelands and submerged lands that are access points for upland recreation activities or facilities are designated recreation. State tidelands and submerged lands designated recreation will be managed to preserve or improve the identified recreational activities and values” (POWIAP 3, 116).

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). In chapter 2 of the POWIAP it states that the west waterfront site, where the proposed leasehold will be located, is “the only place suited for water-related activities at Naukati. The site is the most viable boat launch and water access point to Sea Otter Sound. There are few alternative sites. Use of the site for water-related activities is essential.” It goes on to say that “Design may include limited

water-related commercial/community activities and parking for boat access and marine development” (POWIAP 3, 117).

Tide and submerged lands to the north of the proposed authorization are designated for forestry use. The USFS holds an active easement with DMLW for a log transfer site serialized as ADL 107725. The POWIAP states: “Developments in the Naukati area should be designed to minimize conflicts with the log transfer site and with traffic patterns required for operation of the site” (POWIAP 3, 115). No aspect of the proposed authorization is expected to interfere with ADL 107725 or its use.

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. The activities proposed by Naukati Bay Inc. will meet and promote the above guidelines within the area by providing additional safe moorage locations and boating access to local residents and added opportunities to the developing community.

### **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 proposed lease site is accessible by boat or floatplane via the tide and submerged land. The lease site is also located on the Prince of Wales Island road system. While the remote access road is listed on mapping systems as “Plane Dock Rd,” it is also referred to by the applicant as “Waterfront Rd.”

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

The site is located at Tahka Point along Tuxekan Narrows on Prince of Wales Island in Southeast Alaska. Pursuant to AS 38.05.126(a), the public has a constitutional right to free access to, and use of, navigable or public waters of the State of Alaska. Under 11 AAC 51.045 and AS 38.05.127, DMLW is required to reserve specific public-access easements to and along these waters. Unless comments and other information submitted to DMLW provide justifiable and convincing evidence to do otherwise, this disposal of state interest will be subject to a 50-foot public access easement seaward and landward of the line of mean high water. If DMLW receives notification of concerns or issues related to any restriction of public access, DMLW may require

alternative measures to address site-specific access issues to ensure that public access can be reasonably provided.

### **Public Trust Doctrine**

Pursuant to AS 38.05.126, the proposed lease will be subject to the principles of the Public Trust Doctrine; specifically, the right of the public to use navigable waterways and the land beneath them for: navigation, commerce, fishing, hunting, protection of areas for ecological studies, and other purposes. These rights must be protected to the maximum extent practicable while allowing for the development of this project. As such, DMLW is reserving the right to grant other authorizations to the subject area consistent with the Public Trust Doctrine.

### **Reservation of Mineral Estate**

In accordance with section 6(i) of the Alaska Statehood Act and AS 38.05.125, the state, in this decision, reserves unto itself the mineral estate, including oil and gas, and the rights expressed in the reservation clause of the statute, that being the right to reasonable access to the surface for purposes of exploring for, developing and producing the reserved mineral resources. Exploration and development, if any, which could occur, would be consistent with AS 38.05.130 and other applicable statutes and regulations.

### **Mineral Orders**

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

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

Hazardous materials will not be stored within the proposed leasehold. Stipulations will still 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 December 7, 2023. The deadline for agency comments was January 12, 2023. The following agencies were included in the review:

- ADF&G – Wildlife Cons.
- ADF&G – Habitat Division
- DEC – Commissioners Office
- DEC – Water Plan Review Section Manager
- DNR DMLW OHA – Review & Compliance
- DOT&PF – Statewide ROW Chief

## Agency Review Comment and Response:

**Alaska DOT&PF Comment:** DOT&PF submitted that they had no comment.

**DMLW Response:** None needed.

**ADF&G Comment:** ADFG had no objections but made the following comments:

- Flotation should be made from the best available materials to prevent sinking, breakdown, and subsequent release of toxic materials to the environment. Materials such as beaded Styrofoam (recycled or new material) should be avoided. Closed cell (extruded) expanded polystyrene encapsulated or enclosed in a protective material or equivalent material of good quality and manufactured for marine use is suggested.
- The project area is situated in waters used by various marine mammal species for foraging and travel. While construction activities as proposed may temporarily displace animals, any impact should be temporary. There are no nearby pinniped haul outs, designated critical habitat areas, or known biologically important area for cetaceans.
- ADF&G acknowledges and advocates for the boat dock to remain accessible to the public.

**DMLW Response:** DMLW appreciates the comments and suggestions of ADFG. After the original agency review notice was provided, the applicant submitted an updated development narrative that references only wooden and aluminum materials used for the structures. Additionally, DMLW will apply standard stipulation language that aims to minimize both environmental and animal impacts.

## Background

On January 2, 2004, DMLW issued an aquatic farming lease, ADL 106994, to Naukati Bay Inc. DMLW issued an additional 10-year authorization for ADL 106994 in 2014. During that time, Naukati Bay Inc. used the site and approved structures as an aquatic farm nursery in Naukati Harbor.

On February 26, 2013, DMLW issued ADL 108160, an Interagency Land Management Assignment to the Department of Transportation and Public Facilities. ADL 108160 was issued for “the establishment, maintenance and operation of a public access facility accommodating boats and floatplanes” in Naukati Harbor.

Naukati Bay Inc. first applied to DMLW for a tideland lease on December 16, 2020. That application was serialized as ADL 109150. On September 1, 2021, DMLW signed a preliminary decision to authorize ADL 109150. However, a final lease was not authorized. Following turnover in DMLW staff and Naukati Bay Inc. board of directors, a revised application was submitted and verified on November 10, 2024. Though some details have changed since the original application was submitted in 2020, the scope and intention of the project remains the

same: the applicant intends to close the aquatic farming lease and improve the site for further use as a community dock.

The existing aquatic farm lease, ADL 106994, was extended until January 1, 2026, to keep the authorization in good standing while the current application is under adjudication. ADL 106994 will be closed upon the issuance of ADL 109150.

### **Discussion**

The applicant submitted their application for lease requesting consideration under AS 38.05.810(b-d). This restricts authorizations to nonprofit corporations, associations, clubs, or societies organized and operated exclusively for charitable, religious, scientific, or educational purposes, or for the promotion of social welfare. AS 38.05.810(c) also states: “No lease of land may be granted under this section for a project closed to the use and enjoyment of the general public.”

Naukati Bay Inc. has been registered as a 501c(4) nonprofit organization since 1992. They are recognized as a social welfare group and are exempt from federal income tax. The proposed site improvements will be a public benefit to the developing community by providing safe moorage and additional dock space in an area that is outgrowing available capacity. The applicant states that the nearby public dock authorized by ADL 108160 is often at capacity, leaving a lack of dock space and moorage availability for residents. While the applicant does propose to require slip fees of those that use the docks for moorage, the docks will remain open to the general use and enjoyment of the public and for emergency access to the leasehold and waterway. Additionally, the applicant states that fees charged will fund the maintenance and upkeep of the facility. Because of the reasons listed, DMLW has determined that the applicant qualifies for a lease under AS 38.05.810(b-d).

The proposed changes to the existing leasehold area are expected to accommodate up to 12 boats, measuring up to 20 feet in length. According to the development plan, the applicant will utilize an existing aluminum walkway, measuring seven feet by 70 feet and extending from the shore. At the bottom of the ramp walkway, there are two existing wooden floats, measuring 20 feet by 20 feet. Those two existing floats will be redecked and improved. Then, attached in a linear row, a floating section containing three new, 10 feet by 20 feet aluminum docks will be anchored with 300-pound anchors attached to lines with a 50ft scope at three corners and attached to the piling located in the northwest corner of the leasehold. A new, 26 feet by 30 feet float will also be constructed and attached to the end of the aluminum floats at the piling and will have a small storage shed for maintenance and emergency equipment such as an oil absorbent boom.

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

## **Development Plan**

The Development Plan (DP) attached to this decision (Attachment 1), is under consideration by DMLW. Should the proposed lease be granted, it is anticipated that the DP will need to be updated throughout the life of the lease as activities and/or infrastructure are added or subtracted. All updates must be approved, in writing, by DMLW before any construction, deconstruction, replacement of infrastructure, or change in activity will be authorized. DMLW reserves the right to require additional agency review and/or public notice for changes that are deemed by DMLW to be beyond the scope of this decision.

## **Performance Guaranty**

In accordance with AS 38.05.035, AS 38.05.860, and 11 AAC 96.060(a), the applicant will be required to submit a performance guaranty for the lease to incentivize performance consistent with the conditions of the EA and lease agreement. 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:

### **\$2,500.00 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 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 applicant previously submitted a performance guaranty to DMLW in the amount of \$2,500.00 for the existing improvements and authorization of ADL 106994. Given the applicant's past compliance, the utilization of the same area and similar structures, and the limited impact expected of this authorization, DMLW has decided that increasing the bond amount is not necessary. The bond will, however, need to be updated to reflect the new lease and casefile number.

## **Insurance**

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

## Survey

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

## Compensation and Appraisal

### Annual Land Use Fees:

Based on a Minimum Rent Determination from the DMLW Appraisals Unit and pursuant to 11 AAC 58.410(b), AS 38.05.075(f) and AS 38.05.840(b), the recommended minimum annual rent is \$1,000.

However, as described in the discussion section above, Naukati Bay Inc. qualifies for a lease under AS 38.05.810 (b-d) because of the public benefits that will be provided to the developing community. AS 38.05.810(d) states:

“The director may lease the land to an eligible applicant at a reasonable annual rental, taking into consideration the purposes for which the land is to be used and the financial resources of the applicant. The rental may not be less than one percent of the fair market value on land acquired primarily for development, or less than five percent of the fair market value on acquired land.”

DMLW guidance further establishes a basis to reduce costs for qualifying applicants while returning compensation to the State. Considering the public benefits and values of the proposed project, DMLW is prepared to charge 75 percent of the fair market value of the land to be leased. To determine the annual fee based on this percentage, an appraisal must first be completed.

Due to the applicant’s limited financial resources, completing an appraisal may be cost prohibitive. Appraisal costs may eliminate the potential savings associated with a reduced annual fee based on 75% of the FMV. For these reasons, the applicant can either:

- Pay an annual rent of \$1,000, which is the minimum rental for non-public and charitable leases, or
- Obtain, at applicant expense, an appraisal and pay 75% of the established fair market value annually.

If the applicant chooses to obtain an appraisal, the annual rent will be \$1,000 as established in 11 AAC 58.410(b) until the appraisal is complete; and 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. Additionally, the applicant will be responsible for the payment of any difference from payments made during 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

### **Entry Authorization**

Pursuant to AS 38.05.075(f), DNR-DMLW may authorize the applicant entry onto state land through the issuance of an Entry Authorization (EA) to allow site development and conduct an appraisal, if necessary. The proposed EA would be for a term of three 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. If the applicant chooses not to pursue and provide an appraisal, no EA will be necessary.

### **Subleases**

Subleasing is permissible through AS 38.05.095, if the proposed leased is approved. As this lease is authorized under AS 38.05.810(b-d) for public and charitable use, the lessee may only sublease to another qualified entity under AS 38.05.810(b-d). No commercial use of the leasehold is allowed under AS 38.05.810(b-d). All potential subleases must first be approved in writing by DMLW. As required by 38.05.095(b), a nonprofit organization that is exempted from paying rent on state land under AS 38.05.810 may not sublease. DMLW may conduct further agency review and/or public notice before making a determination on the appropriateness of the proposed sublease. The sublease fee will not be less than 25% of the annual fee paid to the lessee by the sublessee.

### **Reclamation**

In accordance with AS 38.05.090, the leasehold must be restored to a “good and marketable condition” as determined by DMLW within 120 days after termination of the lease.

### **Public Notice**

Pursuant to AS 38.05.945, this PD will be noticed for a 30-day public comment period, starting on May 13, 2025. In addition, post offices 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 June 13, 2025, 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, 4<sup>th</sup> 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 public and charitable lease to the applicant authorizing construction and maintenance of multiple floats for moorage and equipment storage within Naukati Bay, Alaska. 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*

Laurel Smith, Natural Resources Specialist 3

5/13/2025

Date

**Unit Manager Concurrence**

It is the determination of the Division of Mining, Land and Water that it may be in the State’s best interest to issue this lease as described above. This preliminary decision shall now proceed to public notice.

*Mason Auger*

Mason Auger, Natural Resources Manager 2

5/13/2025

Date

**ATTACHMENTS:**

Attachment 1. Development Plan

Attachment 2. Draft Lease Agreement and Special Stipulations

Attachment 3. Draft Entry Authorization