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

Southeast Regional Land Office

Renewal Decision
ADL 107185

Dennis Montgomery dba South Passage Outfitters, LLC

Application for Lease AS 38.05.075(c)

Requested Action

Dennis Montgomery doing business as (dba) South Passage Outfitters, LLC ("Applicant") applied to the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW) to renew the tideland lease for a 10-year term on October 28th, 2024. The renewal authorizes a 6-foot by 75-foot floating dock and a 6-foot by 160-foot boardwalk adjacent to the applicant's private upland Lot 2 depicted on USS 2879 Sitka Recording District, in Gull Cove, within Idaho Inlet, approximately 64-miles west of Juneau, Alaska.

This lease renewal is subject to the DMLW-approved Development Plan dated March 25th, 2004, included as Attachment 1.

In order to qualify for a renewal, a lessee must be in "good standing". Good standing refers to the fact that the lessee's accounts are current, that there are no outstanding compliance issues, and that the lessee maintains a healthy business relationship with the lessor. Dennis Montgomery has maintained the leasehold interest with no known compliance issues and is considered to be in good standing with DNR-DMLW.

DNR-DMLW will renew this lease under the authority of AS 38.05.035(b)(3), AS 38.05.070(e), and AS 38.05.075(c). The lease term will be renewed for another 10-year term.

Authority

Under AS 38.05.070(e), leases may only be renewed once and for a duration that is not longer than the original lease term.

Administrative Record

Case file ADL 107185 is the administrative record for this case. Also incorporated by reference is the *Northern Southeast Area Plan* – October 2002 (NSEAP).

Scope of the Decision

The scope of administrative review for this authorization [AS 38.05.070(e)] is limited to (1) reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and regulations; (3) the facts pertaining to the land or resources; and (4) issues that are material to the determination that issuing the authorization will best serve the interest of the State of Alaska.

Description

Geographic Location

The parcel is located in Gull Cove, within Idaho Inlet, approximately 64-miles west of Juneau, Alaska. The lease area is located on State tidelands and submerged land at approximately 58°2107 N, 136°1554 W (WGS84)

Legal Description

Copper River Meridian, Township 42 South, Range 57 East, S ½ Section 19, on approximately 0.03 acres of State-owned tide and submerged land. The tideland area is depicted on US Survey (USS) 2879. The leasehold area contains approximately 0.3 acres.

Other Land Information

Municipality: Hoonah-Angoon Census Area Regional Corporation: Sealaska Corporation

Village Corporation: N/A

Federally Recognized Tribe: The Central Council of Tlingit and Haida Indian

Tribes of Alaska

Title

The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying Idaho Inlet 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-23976 was requested on May 1st, 2025, from DMLW 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.

Planning and Classification

The proposed site is subject to the *Northern Southeast Area Plan* – October 2002 (NSEAP) and is located within Management Unit CT-002 – Idaho Inlet. The designated land use is Habitat (Ha) and Harvest (Hv) which converts to "Wildlife habitat land" as the land classification.

Ha – Habitat: "This designation applies to areas of varied size for fish and wildlife species during a sensitive life-history stage where alteration of the habitat or human disturbance could result in a permanent loss of a population or sustained yield of a species. This land will remain in state ownership except for areas where a tidelands conveyance to a municipality is allowed under AS 38.05.820 and AS 38.05.825. This designation applies to uplands, tidelands, and submerged lands.

Hv – Harvest: Fish and wildlife harvest areas are subsistence, recreational and/or community harvest of varied size where alteration of habitat could permanently limit sustained yield to traditional users; or are areas of intense harvest where the level of harvest has reached, or is projected

to reach, the harvestable surplus for the resource. This land will remain in state ownership except for areas eligible for a tidelands conveyance to a municipality under AS 38.05.820 and AS 38.05.825. This designation applies to uplands, tidelands and submerged lands (NSEAP 3-3)."

According to 11 AAC 55.040(c), "A classification identifies the primary use for which the land will be managed, subject to valid existing rights and to multiple use."

Management Intent

"Protect Pacific herring over-wintering area. Protect anadromous stream and estuarine areas where brown bears concentrate. These resources occur at specific locations within this unit. Contact ADFG for site specific locations of sensitive habitats authorizing development (NSEAP 3-323)."

Resources and Uses

Pacific herring utilize this unit as an overwintering area. Sea otters have been reported in this unit. Juvenile and adult coho, pink, and chum salmon rear, school, spawn, and migrate through this unit...Commercial harvest of Dungeness, tanner, and both brown and red King crab occur within this unit. Commercial harvest of Pacific herring occur in this unit. 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. Subsistence fishing also occurs in this area for salmon... (NSEAP 3-323).

- 11 AAC 55.230. "Wildlife Habitat Land. Land classified wildlife habitat is land which is primarily valuable for:
- A. Fish and wildlife resource production, whether existing or through habitat manipulation, to supply sufficient numbers or diversity of species to support commercial, recreational, or traditional uses on an optimum sustained yield basis; or
- B. A unique or rare assemblage of a single or multiple species of regional, state, or national significance (NSEAP 4-3)."

Fish and Wildlife Habitat and Harvest Areas Goals

"Ensure access to public lands and waters to promote or enhance the responsible public use and enjoyment of fish and wildlife resources. When resource development projects occur, avoid or minimize reduction in the quality and quantity of fish and wildlife habitat. Contribute to Alaska's economy by protecting the fish and wildlife resources which contribute to directly or indirectly to local, regional and state economies through commercial, subsistence, sport and non-consumptive uses (NSEAP 2-10)."

Management Guidelines: Habitat Areas

"All land use activities will be conducted with appropriate planning and implementation to avoid or minimize adverse effects on fish, wildlife, or their habitats (NSEAP 2-10)."

Management Guidelines: Harvest Areas

"Parcels designated harvest are to be managed to ensure minimal disturbance to the harvest resources identified for a given area (NSEAP 2-15)."

"Uses adjacent to intensively used commercial, recreation, community, or subsistence harvest areas will not preclude access to harvest activities during the harvest or use season (NSEAP 2-17)."

Per the NSEAP, the applicant's continued use of the dock is consistent with the designated land uses in the area which include Habitat (Ha) and Harvest (Hv). The leasehold is in a remote area; the floating dock has a minimal footprint on state-owned tide and submerged lands and is seasonally used from June to September. The dock and boardwalk do not impede access to state tidelands or submerged lands.

Mineral Orders

The proposed leasehold does not fall within the areas delineated in Administrative Mineral Closing Order (MCO) No. 770 (NSEAP, Appendix B – B-1). Neither an MCO nor a leasehold location order is necessary to or appropriate for this proposed leasehold.

Local Planning

Gull Cove is not in an organized municipality. The lease area is within an unorganized borough, and not subject to local planning zoning ordinances.

Traditional Use Finding

Pursuant to AS 38.05.830, and after due consideration, we find that renewal of this 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.

Access

Physical and Legal Access

Physical access to the lease site is via state-owned tide and submerged lands in Gull Cove. Additional access to the leasehold is through applicant's private upland Lot 2, depicted on USS 2879 Sitka Recording District.

Access To and Along Public Waters

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.

Environmental Risk

It is DMLWs management responsibility to protect the overall public interest if there is a reasonable expectation that a hazardous condition, or hazardous, toxic or radiological material or contamination from such material exists or is known to exist on the land being disposed of. No hazardous material or contamination from hazardous material is known to exist on the land proposed for lease authorization. Environmental risk associated with this proposed authorization and mitigation measures will be included within the stipulations of this lease agreement.

The applicant temporarily stores gasoline on the dock in 6-gallon plastic tanks, up to 40-gallons maximum. After skiffs are refueled, the plastic gasoline tanks are removed and stored on the private upland property. The applicant has absorbent pads on-site if any small spillages occur. Per ADFG Agency Review comment, grounding of the boardwalk and dock are not of concern for this authorization.

Background

- April 2nd, 2004 Application received for a tideland lease for a commercial dock in Gull Cove, Alaska
- May 28th, 2015 10-year Lease Agreement issued to South Passage Outfitters, LLC, expires May 31st, 2025
- October 28th, 2024 Renewal application received for a continued 10-year tideland lease
- May 1st, 2025 Active adjudication begins

Application Reviews

Agency Review

An Agency Review was conducted from May 1st, 2025, to June 2nd, 2025. The following organizations were included in this review:

- Alaska Association of Conservation Districts (AACD)
- Department of Fish and Game (ADFG) Division of Habitat and Division of Wildlife Conservation Access Defense Program
- Department of Environmental Conservation (DEC) Commissioner's Office and Division of Water – Wastewater Discharge Authorization Program
- DNR Division of Parks and Outdoor Recreation (DPOR) Office of History and Archaeology (OHA)
- Department of Transportation and Public Facilities (DOT&PF) Design and Engineering Services Right of Way Office

Agency Review Comment and Response Summary

ADF&G has reviewed the attached application from Dennis Montgomery, doing business as South Passage Outfitters, LLC, for the continued use of a tideland lease in Gull Cove, within Idaho Inlet, approximately 64-miles west of Juneau. Note: ADF&G subsequently learned that the dock grounds at low tide; however, only about 75-feet of the structure is classified as the "dock", not the 200-feet originally indicated in the Agency Review. The

remaining length is considered the "boardwalk". The combined total length of the boardwalk and dock measure approximately 275 to 300-feet.

ADF&G has no objection to the issuance of this lease; however, ADF&G have the following comments and recommendations:

- 1. ADF&G generally recommends including provisions regarding the construction of private-use docks and breakwaters that ensure that no portion of any dock or walkway grounds at any tidal stage, and that appropriate materials are used for dock construction. However, since this is a lease renewal, and while ADF&G would have potential concerns if the site were in better Dungeness crab habitat, we do not have those grounding concerns for Idaho Inlet.
- 2. Ensure that spill response equipment, including absorbent pads, is readily available and maintained on-site.
- 3. Marine Mammals:
 - a. If the lessee has documented any negative marine mammal interactions, we request to be kept informed of them. Please direct any relevant information to ADF&G Marine Mammal Program at dfg.dwc.mmcomments@alaska.gov. Report injured, entangled, or dead marine mammal to NOAA Fisheries Statewide 24-hour Stranding Hotline: 877-925-7773. If the stranded animal is a sea otter, please call the USFWS Service 1-800-362-5148 or the Alaska SeaLife Center Hotline 1-888-774-7325, 24-hours.
- 4. Avoiding Conflict with Wildlife:
 - a. Wildlife Safety and Attractants: all fuel, trash, food and other potential wildlife attractants (including petroleum products) must be properly stored.
 - b. Bear Safety: guidance on staying safe in bear country and avoiding negative interactions, including the use of bear-resistant containers and electric fences can be found on the ADF&G website.
 - c. Any human-wildlife conflicts should be reported to ADF&Gs Division of Wildlife Conservation.
 - d. Disposing of Fish Remains:
 - i. If cleaning fish on-site, chop the remains into small pieces and discard them in fast-moving water.
 - ii. Do not dispose of waste in slow-moving or still water, as it can attract wildlife.
 - iii. Use bear-resistant containers.
 - e. Defense of Life or Property: shooting bears that access supplies stored on site is not considered a Defense of Life or Property action unless all attractants have been properly secured.
 - f. Feeding wildlife is illegal in Alaska and creates serious safety risks. Doing so to get pictures or for any other reason is strictly against the law. It can lead to aggressive animal behavior and often results in the animal being killed.

- g. Responsible Wildlife Viewing: for guidance on responsible wildlife viewing, please refer to ADF&Gs Wildlife Viewing Ethics page.
- 5. Eelgrass beds along the project area shoreline are ecologically sensitive habitats. To minimize disturbance, anchoring should be avoided and vessel access restricted in shallow areas. The locations of these eelgrass beds are publicly available on the Mariculture Map Portal.
- 6. The activity at the dock and boardwalk should not interfere with public use of state waters for recreation, fishing, or access.
- 7. Project activities may affect species listed under the Endangered Species Act and other sensitive resources, such as migratory birds, which are managed by the USFWS. We recommend using the Information for Planning and Consultation tool to identify USFWS trust resources that may be present within the project boundary, including determining the probability of presence during project activities. For further details, contact the Southern Alaska Fish & Wildlife Field Office at 907-271-2888.

Discussion

This lease renewal is in the best interest of the State as the land under lease will continue to enhance public recreation and enjoyment of Alaska's waters for fishing and recreation. The floating dock and boardwalk continue to provide access to and from private uplands to state-owned tide and submerged lands. The applicant is in good standing and has a positive working relationship with DNR-DMLW.

The boardwalk portion of this authorization is always grounded, beginning from the private upland property and continues approximately 160-feet onto state tidelands, the boardwalk portion does not float at any tidal stage. The remaining, approximately 75-feet of the dock portion, is located on state-owned tide and submerged lands. The dock floats during high tide and is grounded during low tides, no piles are involved with this lease authorization. Alaska Department of Fish and Game (ADFG) was notified during Agency Review and provided a comment stating that grounding of the floating dock will be allowed to continue at low tide within Gull Cove for this specific renewal. Any negative interactions with marine mammal or endangered species should immediately be reported to ADFG or USFWS.

Recommendation and Preliminary Decision

Authorization Type and Term

As provided by AS 38.05.070(e), DMLW has determined that it is appropriate to renew the expired lease issued to Dennis Montgomery dba South Passage Outfitters, LLC for a consecutive 10-year term, subject to the terms and conditions of the Lease Agreement (Attachment 2) and the following.

Performance Guaranty

Performance guaranties (PG) are a means to encourage compliance with the terms and conditions of a lease and provide for a way to pay for corrective action should the user of state-owned land fail to meet those requirements. The amount of a Performance Guaranty

should equal the possible costs the state would incur to terminate an agreement authorizing use of state land, and return the land to marketable and environmentally sound condition.

DNR-DMLW received a Performance Guaranty for \$2,300.00 serialized as: Certificate of Deposit Number 7102225922 on June 23rd, 2015. This PG is auto renewed and is accepted by DMLW for the renewal term.

Insurance

The applicant holds and maintains an insurance policy serialized as: PHPK2544495-014 that meets DNR-DMLW requirements, as required by Condition #24 and Additional Stipulation #12 of the lease document.

Compensation and Appraisal

Annual Land Use Fee

The original annual land use fee was \$1,000.00. DMLW received a Minimum Rent Determination from DNR – Appraisals Unit on June 10th, 2025, indicating the annual use fee will remain the same.

Annual Use Fee for Renewal: \$1,000 per year

Periodic Rate Adjustment

In accordance with AS 38.05.105, the annual rent payment will be subject to adjustment at five-year intervals after the issuance of the lease renewal.

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.

Survey

DNR-DMLW accepted a development diagram dated March 25th, 2004, for the issuance of the original lease in 2015. The same development diagram will be used for this re-issuance.

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 renewed lease.

Quinn McClurg	9/25/25	
Quinn McClurg, Natural Resource Specialist III	Date	

Unit Manager Concurrence

The file has been reviewed and found to be complete. It is the finding of the Division of Mining, Land & Water, Southeast Region Land Manager, that renewal of this lease is appropriate. If no appeal is filed by the appeal deadline, this decision goes into effect as a final administrative order and decision of the Department on the 31st day after issuance.

Mason Auger	9/30/2025
Mason Auger, Natural Resource Manager II	Date

ATTACHMENTS:

Attachment 1. Development Plan Attachment 2. Standard Lease Agreement

PUBLIC NOTICE AND APPEAL PROCESS:

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.