

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

Renewal Decision

ADL 106539

Rick Hufstader dba Alaskan Dreams Fishing Camp

Application for Lease Renewal

Executive Summary

On July 2, 2010, the Division of Mining, Land & Water (DMLW) received a lease renewal application from Rick Hufstader, doing business as Alaskan Dreams Fishing Camp ("applicant") for continued use of a floating lodge. Due to low staffing, an interim permit for continued use was issued to the applicant for a five-year term. At the expiration of that interim permit, it was discovered that the applicant was using U.S. Forest Service uplands without authorization. In June 2016, the applicant entered into an Agreement to Resolve Unauthorized Use with the DMLW. This agreement established terms for the use of state land until a time when the applicant obtained a permit to use U.S. Forest Service uplands. In February 2017, the applicant obtained permission to use U.S. Forest Service uplands. Due to low staffing, the application was not adjudicated until now.

Requested Action

Rick Hufstader, doing business as Alaskan Dreams Fishing Camp ("applicant"), applied for a lease renewal on July 2, 2010, to operate and maintain a commercial recreation lodge near El Capitan Passage.

The lease request is for continued use of an existing floating lodge used for commercial recreation and as the applicant's private residence. A development plan is included as Attachment 1.

Existing Improvements:

- Airplane float, 36ft x 18ft;
- Four lodging floats,
 - Float 1, 56ft x 58ft;
 - Float 2, 70ft x 64ft;
 - Float 3, 70ft x 35ft;
 - Float 4, 70ft x 35ft
- 12 shore ties

The total area requested by the applicant is approximately 2.5 acres.

Proposed Action

The Division of Mining, Land & Water (DMLW) proposes to renew this 10-year lease under Alaska Statute (AS) 38.05.070(e).

Scope of Decision

The scope of this decision limited to the determination of whether it is in the State's best interest to renew a 10-year lease issued 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) the facts pertaining to the land or resources; and (4) any issues that are material to the determination.

Authority

This lease application is being adjudicated pursuant to AS 38.05.035(b)(1) and AS 38.05.035(e) Powers and Duties of the Director, and AS 38.05.070 Generally. The authority to execute the renewal decision and the lease has been delegated to the Regional Managers of the 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 October 1998 *Prince of Wales Island Area Plan* (POWIAP) and other classification references described herein, and the casefile for the application serialized by DNR as ADL 106539.

Location Information

Geographic Location:

El Capitan Passage adjacent to Orr Island, Alaska.

Property Description:

The proposed lease is located within the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, and the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$, Section 12, Township 69 South, Range 78 East, Copper River Meridian and more particularly located within an unnamed cove adjacent to Orr Island, as shown on the attached Development Plan. The proposed leasehold contains approximately 2.5 acres, more or less.

Other Land Information:

Municipality: n/a

Regional Corporation: Sealaska Corporation

Village Corporation: n/a

Federally Recognized Tribe: n/a

Approximate Coordinate Location: 55.9028° N, 133.3832° W (WGS84)

Title

The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying El Capitan Passage in the section 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 U.S. Forest Service owns the uplands adjacent to the leasehold. The U.S. Forest Service will be notified of this preliminary decision.

Third Party Interests

None identified.

Planning and Classification

The proposed site is subject to the POWIAP and is located within Management Unit 7a. The designation, classification, and management intent of the land are described below.

Designation:

“Prime habitat/intensive harvest – Areas that meet the prime habitat criteria either a) because of the harvest uses, or b) meet both the prime habitat criteria and have intensive harvest use” (POWIAP, p. 3-4).

“Recreation (anchorage) – Locations commonly used by recreation or commercial vessels for anchoring” (POWIAP, p. 3-4).

Classification:

Wildlife Habitat Land – “Land classified wildlife habitat is land which is primarily valuable for (1) fish and wildlife resource production, whether existing or through habitat manipulation, to supply sufficient numbers or a diversity of species to support commercial, recreational, or traditional uses on an optimum sustained yield basis; or (2) a unique or rare assemblage of a single or multiple species of regional, state, or national significance” (11 AAC 55.230).

Public Recreation Land – “Land classified public recreation is land that is suitable for recreation uses, waysides, parks, campsites, scenic overlooks, hunting, fishing or boating access sites, trail corridors, or greenbelts along bodies of water or roadways” (11 AAC 55.160).

Management Intent:

“State tidelands and submerged lands will be managed for multiple use. Marble Passage, Tenass Pass, and Brockman Pass will be managed consistent with the U.S. Forest Service semi-primitive recreation management of the adjacent uplands. Fifteen areas are managed for support facilities for timber harvest.

Cyrus Cove will be managed to protect anchorage use at existing levels or better. Most of the cove should be available for anchorage use because, depending on wind direction, different locations within the cove are used for anchorage.

Tidelands and submerged lands will be managed to protect important recreation and fish and wildlife habitat and harvest areas. Measures should be taken to mitigate adverse impacts to these values.

With the exception of the mouths of four anadromous fish streams, all state lands in this subunit are open to mineral entry.” (POWIAP, p. 3-102)

The proposed use of state land is found to be consistent with the planning and classification set out in the POWIAP. This use is for commercial recreation on state land focused around the harvest of seafood. As such, the proposed use is consistent with the harvest and recreation values ascribed by 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 decision, address the potential impacts and present mitigation measures that will either minimize or avoid impacts to traditional uses.

Access

The physical and legal access to the proposed lease site is via navigable waters.

Access Along Public Waters:

The site is located on El Capitan Passage. 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, the DMLW is required to reserve specific public-access easements to and along these waters. Unless comments and other information submitted to the 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 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, the 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 Administrative Mineral Closing Order No. 739 (POWIAP, Appendix C). Neither mineral closing order nor a leasehold location order is necessary or appropriate for this proposed lease.

Hazardous Materials and Potential Contaminants

Hazardous materials, specifically 1000 gallons of gasoline and 2000 gallons of diesel fuel, will be stored within the proposed leasehold. 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. The performance guaranty associated with this authorization will also serve to protect the state from damages resulting from potential contaminants.

Agency Review

An agency review was conducted from March 1, 2019, to March 31, 2019. No comments were received from state agencies.

Background

In April 1994, an application for land use permit was submitted to the DMLW by Art King for the proposed use at the subject area. This application was approved, and a permit was issued for the period of April 1994

to April 1999. At the expiration of that permit, the permittee submitted a 10-year lease application for the subject area which was filed under ADL 106539. In November 2000, the floating lodge was sold, and the lease application transferred to the applicant. A 10-year lease was issued in December 2000.

On July 2, 2010, the applicant submitted a renewal application to the DMLW; that renewal application is the subject of this decision. Due to low staffing, the DMLW was not able to adjudicate the renewal application at that time, and an interim authorization was afforded to the applicant for five years. This interim authorization expired in December 2015. At that time, it was discovered that the applicant was using U.S. Forest Service uplands adjacent to the leasehold without authorization. The applicant was advised that, until an authorization was secured from the U.S. Forest Service, the DMLW would not be able to issue a lease renewal. In order to maintain their operations and provide compensation to the state for their use of state land, the applicant entered into an Agreement to Resolve Unauthorized Use with the DMLW filed under ADL 108526. This agreement established terms for the use of state land until a time when the applicant obtained a permit to use U.S Forest Service uplands.

On February 14, 2017, a fully executed permit was received from the U.S Forest Service for the applicant's unauthorized activities adjacent to the leasehold. Due to continued low staffing, the renewal application was not adjudicated until now.

Discussion

This lease renewal is found to be in the interest of the state. The applicant has maintained a good working relationship with the DMLW throughout the terms of their lease and other agreements. As is discussed above, the proposed use is found to be consistent with the planning and classification of the area and there are no foreseeable issues with traditional uses of the land. Additionally, there have been no conflicts with other users of state land in the 20 years that the improvements have been in place. Given these considerations, the DMLW will renew this lease for an additional 10-year term.

The lease shall be subject to the standard DMLW Lease Agreement (form 102-111, re-revised May 2001), Special Stipulations and the terms and conditions set forth therein (Attachment 2).

Development Plan

The development plan attached to this decision (Attachment 1) is under consideration by the DMLW. Should the proposed lease be granted, it is anticipated that the development plan 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 the DMLW before any construction, deconstruction, replacement of infrastructure, or change in activity will be authorized. The DMLW reserves the right to require additional agency review and/or public notice for changes that are deemed by the 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 and to provide a mechanism for the state to ensure that the lessee shares in financial burden in the event of noncompliance for site cleanup, restoration and any associated costs after termination or expiration of the leases, the following bonds will be required.

\$18,500 Performance Bond:

The applicant has maintained an \$18,500 corporate surety as a performance guaranty under the terms of the Agreement to Resolve Unauthorized Use filed under ADL 108526. It is recommended that, should a renewal lease be issued, that corporate surety be transferred to this lease.

Insurance

Per Condition #24 of the lease document, applicant shall secure or purchase at its own expense, and maintain in force at all times during the term of this lease, the following policies of insurance to protect both themselves and the State of Alaska (its officers, agents and employees):

Commercial General Liability Insurance Policy:

Such policy shall have minimum coverage limits of no less than \$1,000,000 combined single limit per occurrence.

If the applicant's policy contains higher limits, we shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to us prior to the issuance of this lease and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. The applicant must provide for a 30-day prior notice to the State of Alaska before they cancel, not renew or make material changes to conditions to the policy. Failure to furnish satisfactory evidence of insurance, or lapse of the policy, is a material breach of this lease and shall be grounds, at the option of the State of Alaska, for termination of the lease.

Workers' Compensation Insurance:

The applicant shall provide and maintain, for all its employees, Workers' Compensation Insurance as required by AS 23.30.045. Where applicable, coverage must comply with any other statutory obligations, whether Federal (i.e., U.S.L.&H., or Jones Act) or other state laws in which employees are engaged in work on the leased premises. The insurance policy must contain a waiver of subrogation clause in favor of the State of Alaska.

All insurance policies shall comply with, and be issued by, insurers licensed to transact the business of insurance under Alaska Statute, Title 21. The policy shall be written on an "occurrence" form and shall not be written as a "claims made form unless specifically reviewed and agreed to by the Division of Risk Management, Department of Administration. The State of Alaska must be named as an additional named insured on the policy with respect to the operations of the applicant on or in conjunction with the leased premises, referred to as ADL 106539.

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.

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. Compensation will be based on the DMLW Appraisals Unit's Remote Fee Schedule (Floating Camp and Lodge Sites Report No. 2498-12).

Compensation

Annual Land Use Fees:

The annual land use fee will be set at \$1,250 per the approved fee schedule.

Alternatively, the applicant may, at their expense, provide a fair market value appraisal of the proposed leasehold prepared by a licensed appraiser approved by the Appraisals Unit. The fair market value will be used to set the annual land use fee, except that the value may not be less than the minimum rent as established in 11 AAC 58.410(b). The annual land use fee shall be the minimum lease fee of \$1000 as established in 11 AAC 58.410(b) until an 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 land use fee shall remain at \$1,000. 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.

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.

Visitor Day Use Fee:

All commercial recreation authorizations are subject to a \$4.00/day "Visitor Day" fee under 11 AAC 96.250(18), for each client using state land. A Visitor Day is defined as meaning all or any part of a calendar day which a commercial recreation client is present, with each client representing a separate visitor day if multiple clients are present at any time during a calendar day. This fee is collected once a year and will be due on the same day as the annual fee.

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.

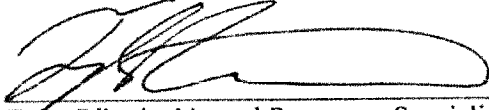
Reclamation

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.

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 renewed lease.



Tyler Riberio, Natural Resources Specialist

4/22/19

Date

Unit Manager Concurrence



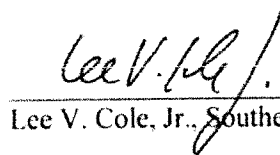
Ryan Wilson, Natural Resources Manager

4/22/19

Date

Regional Manager's Decision

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.



Lee V. Cole, Jr., Southeast Regional Manager

April 22, 2019

Date

ATTACHMENTS:

Attachment 1. Development Plan

Attachment 2. Standard Lease Agreement and Special Stipulations

A person affected by this decision may appeal it in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of "issuance" of this decision, as defined in 11 AAC 02.040(c) and (d) and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-(907) 269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. Under 11 AAC 02.030, appeals and requests for reconsideration filed under 11 AAC 02 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) and (b).

If no appeal is filed by the appeal deadline, this decision becomes a final administrative order and decision of the department on the 31st calendar day after issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to the Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.