

**COMPETITIVE LEASES**  
**ADLs 418671, 418673, 418674**  
**Final Finding and Decision**

This Final Finding and Decision is intended to update and complete the Preliminary Decision and Finding dated August 25, 2009. The Preliminary and Final Findings together constitute the final agency decision.

**Action**

Based on requests for long-term use of state lands in Deadhorse, the Department of Natural Resources, Division of Mining, Land and Water is proposing to lease Tracts 14, 15, and 16 within the North Slope Lease Tracts, ASLS 76-227, located within Sections 17 and 18, Township 10 North, Range 15 East, Umiat Meridian. The lease tracts range from 9.75 to 11.77 acres. All three of the lease tracts contain improved State-owned gravel pads ranging in size from 2.23 to 5.12 acres of the tracts. The proposed leases would have a term of 25 years. The Division of Mining, Land, and Water proposes to offer competitive leases at public auction via sealed bids for these sites.

This document serves as a final State's best interest finding regarding the leasing of these tracts.

**Scope of the Review and Finding**

The scope of this final finding and decision is to consider long-term land use and provide approval to proceed with the process of issuing competitive leases of Tracts 14, 15 and 16 of the North Slope Lease Tracts. The scope is based on the statutes, regulations and other facts contained in casefiles for ADLs 418672, 418673, 418674 and the body of this decision. DNR is in the process of completing the final findings for five Deadhorse lease tracts. The scope of this decision is for ADLs 418671, 418673 and 418674 only.

**Authority**

These proposed leases are being adjudicated pursuant to AS 38.05.035(e), AS 38.05.070, AS 38.05.075, and 11 AAC 58. The authority to execute the Final Finding and Decision has been delegated to the Regional Manager of the Northern Regional Office of the Division of Mining, Land and Water.

**Modifications to the Preliminary Decision**

There are no changes to fundamental proposals in the Preliminary Decision. The Final Finding has been updated to specify the method of auction and address public comments. Further auction details will be available in the auction brochure.

**Administrative Record**

The case files for ADLs 418672, 418673, 418674 are the administrative records for these cases. Also incorporated by reference are the Alaska Coastal Management Program and the North Slope Borough Coastal Management Plan. Procedures within the Division of Mining, Land & Water's Procedure Manual have been followed.

**Traditional Use Finding (AS 38.05.830)**

Not required, these parcels are within the North Slope Borough

**Location and legal description**

The potential lease sites are located in Deadhorse within the North Slope Lease Tracts, ASLS 76-227, located within Township 10 North, Range 15 East, Sections 17 and 18, Umiat Meridian. The individual tracts proposed for lease are as follows:

ADL 418671	Tract 14	10.96 acres
ADL 418673	Tract 15	9.75 acres
ADL 418674	Tract 16	11.77 acres

**Borough/Municipality:** These parcels are located within the North Slope Borough.

**Alaska Coastal District:** These parcels are located within the North Slope Borough Coastal District.

**Regional/Village Corporation/Council:** Arctic Slope Regional Corporation.

**U.S.G.S. Map:** Beechey Point A-3 NE 25K.

**Title**

**Acquisition:** Tentative Approval under GS 1338. Patent #50-74-0092 issued 03-27-74.

**Other Interests and/or Conflicts:** Oil & Gas Lease ADL 28330 and Land Use Permit, LAS 24897, to Nabors Alaska Drilling, Inc.

**Planning and Classification**

**Surface Classification:** Industrial (Order No. C-NC-80-049)

**Municipal Plan/Zoning:** Resource Development

**Access**

The Spine Road provides access to Tracts 14, 15, and 16. Access to the gravel pad on these tracts is via a driveway on Tract 14. If the successful bidder(s) for Tracts 15 and 16 is not the successful bidder for Tract 14, new driveways for these tracts will be needed to provide physical access to the pad.

**Background**

These lease tracts are currently in use as authorized by temporary, short-term land use permit. Tracts 14, 15, and 16 contain an improved gravel pad. This pad is currently being used by Nabors Alaska Drilling, Inc. under Land Use Permit LAS 24897. This permit expires on December 31, 2009.

Portions of tracts 14, 15, and 16 were contaminated while being leased from the State of Alaska by Frontier Companies of Alaska, Inc. (FCA). When FCA went bankrupt and had no assets the site was cleaned up under the Orphaned Site Cleanup Program. BP Exploration (Alaska) Inc. under the Charter for Development Orphaned Site Cleanup Program removed the contaminated gravel from Tracts 14, 15, and 16. Nabors, in lieu of rent, backfilled clean gravel into the excavated areas. The clean up and removal of contaminants was approved by ADEC on June 21, 2005.

**Survey and Appraisal**

No new survey is required. These tracts are part of the North Slope Lease Tracts, ASLS 76-227, and are already surveyed. No changes are needed to this survey.

The appraisal has been completed, reviewed and approved on August 31, 2009. The appraised values are as follows:

Tract	Acres	Market Value	Annual Rent
14	10.96	\$1,780,125	\$142,400
15	9.75	\$1,545,775	\$123,700
16	11.77/ 8.24 usable	\$1,225,997	\$98,100

The appraised values include the value of the existing State-owned gravel pad. The appraised annual rent is based on the appraised value and will be the minimum bid for these lease tracts.

### **Performance Guaranty and Insurance**

**Performance Guaranty:** If this property is leased, a performance guaranty will be required for each lease. The amounts would be determined using the division's performance guarantee matrix and will be based on the development plan(s) that are eventually submitted by the successful bidders at auction. The guaranties would take into account the size of the buildings to be constructed, storage areas, and amount of fuel to be stored onsite. The guaranties may be changed upon modification of the approved development plans.

**Insurance:** The successful bidders will be required to obtain insurance that is satisfactory to the division. If current insurance is adequate, they can add the State of Alaska to their existing commercial general liability insurance policy as an additional insured.

### **Hazardous Materials and Potential Contaminates**

The prospective lessees are expected to and have been given the opportunity to inspect the proposed lease parcels and familiarize themselves with the condition and quality of the land. The state makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land here proposed for lease. The State of Alaska does not assume any liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances be found.

### **Agency Comments**

DNR's proposed leases were sent out for agency review on July 16, 2009 with a July 31, 2009 comment deadline. The following response was received:

Alaska Department of Fish and Game (ADF&G): No Objection

The following agencies were contacted but did not respond:

Alaska Department of Environmental Conservation (ADEC)  
North Slope Borough  
ADNR Archaeology & Historic Preservation  
Fish & Wildlife Service  
Division of Oil & Gas (DOG)  
Alaska Department of Transportation (ADOT)  
Corps of Engineers  
Division of Coastal and Ocean Management

### **Public Notice**

AS 38.05.945 public notice was published in the Fairbanks Daily News-Miner Newspaper and on the DNR website on August 26, 2009.

AS 38.05.945-946 notice was sent to the North Slope Borough. Notices were sent for posting at the Prudhoe Bay and Barrow Post Offices. Courtesy notices were sent via email to interested parties. The following comments were received from Nabors Alaska Drilling, Inc. (Nabors).

#### ***Nabors Comment 1. Background:***

- a. *Nabors has occupied the Frontier Pad since 1992.*
- b. *In September 1995, Nabors submitted a Land Use Permit Application to DNR for one year.*

- c. *The 1995 Land Use Permit contained provisions which contemplated the execution of a lease agreement between Nabors and the State for the Frontier Pad by May 1, 1997.*
- d. *In February 1997 DNR acknowledged that it had not been able to process Nabors' Lease application in a timely manner.*
- e. *In November 1998, Nabors' engaged the services of Terrasat, Inc. for the purpose of developing a work plan to remediate the Frontier Pad as contemplated by Nabors and DNR.*
- f. *On September 28, 2000, DNR confirmed its intention to move forward with the ten-year lease in its Preliminary Finding and Decision.*
- g. *January 2001, Nabors again engaged the services of Terrasat, Inc. for the purpose of working with DNR regarding remediation standards, finalizing a work plan to meet those standards and further investigating the conditions of the Frontier Pad.*
- h. *May 2003, Nabors engaged the services of Travis/Peterson Environmental Consulting, Inc. (Travis/Peterson) for the purposes of performing a Phase I Environmental Site Assessment (ESA) and to negotiate the cleanup criteria with DNR and DEC.*
- i. *Travis/Peterson submitted a Phase I assessment in July 2003, therein recommending that a Phase II ESA be conducted.*
- j. *September 2003, Travis/Peterson rendered its Phase II Report, a proposed Corrective Action Plan and conducted discussions with DEC regarding a suitable means of remediating the Frontier Pad contaminated soils.*
- k. *Summer of 2004, Nabors removed its equipment from contaminated areas of the Frontier Pad in anticipation of remediation scheduled to commence in the fall of 2004.*
- l. *In a conference call on September 1, 2004, DNR informed Nabors and Travis/Peterson that DNR had decided not to proceed with a lease of the Frontier Pad to Nabors as had previously been contemplated, and that DNR expected that funding from the BP Charter for Development orphan pads program would be available for the Frontier Pad cleanup.*
- m. *September 23, 2004 Nabors received a decision letter from DNR which formalized the DNR position expressed in the September 1<sup>st</sup> conference call.*
- n. *An appeal of this decision resulted in (1) a payment from Nabors to DNR to cover rent for Nabors' occupancy of the Frontier pad, (2) the issuance of the Permit under which Nabors presently occupies the Frontier Pad, and (3) cooperation by Nabors in DNR's ensuing environmental remediation of the Frontier pad.*

**DNR Response:** DNR accepts Nabors comment and acknowledges the long standing relationship that Nabors has had with DNR and their presence as the largest drilling company on the North Slope.

Due to statutory limitations the State was not able to adjudicate a negotiated lease agreement as Nabors requested in 2000 or now. Nabors original Lease application and this proposed auction are being adjudicated pursuant to AS 38.05.035(e), AS 38.05.070, AS 38.05.075, and 11 AAC 58. Under AS 38.05.070(b) the State is unable to issue a negotiated lease unless the appraised value of the transaction is \$5,000 a year or less. Even if a negotiated lease had been issued to Nabors in 2000 as requested it would have been for 10 years and set to expire in 2010. A continuation of their lease would have been adjudicated pursuant to State statutes that require DNR to adjudicate Nabors land lease as a competitive lease.

**Nabors Comment 2. Renewal of Nabors' Permit:**

*"Nabors' relationship with DNR regarding Nabors' long-term historic use and occupancy of the Frontier Pad, as indicated above, has resulted in reasonable*

*expectations that Nabors would be permitted the continued use of this property. These expectations have caused Nabors to make significant financial and logistical commitments to the Frontier Pad. These commitments include the storage of a significant amount of large equipment on the site, which will be burdensome to remove, if required. Additionally, in response to industry demand, Nabors has made commitments to expand its Alaska North Slope (ANS) operations and expects that such expansion will require additional pad space. Furthermore, in reliance upon its reasonable expectations, Nabors has foregone opportunities to move its operations to other sites. Given the foregoing, as an alternative to offering the Frontier Pad for lease, Nabors respectfully requests that DNR consider renewing the present Nabors use permit giving due weight the present value of the Frontier Pad in determining a reasonable user fee.”*

**DNR Response:** DNR understands and is aware of the long history that Nabors' has had with the State of Alaska. Nabors is currently under a State of Alaska DNR Land Use Permit authorization. All DNR Land Use Permits clearly state that these authorizations do not constitute a long-term property right despite any expectations Nabors may have had. A Land Use Permit allows for temporary use of State land. While under a Land Use Permit, the permittee can not develop long-term permanent-type improvements on the land. It is only under a Lease Agreement that a lessee obtains some property rights and the concomitant ability to develop permanent improvements on State land. DNR concurs with Nabors assessment that there is a shortage of land available for industrial use in Deadhorse. Under the current Nabors Land Use Permit, only 11 of the 29 usable acres can be used. DNR believes that it is in the State's best interest to completely utilize Tracts 14, 15 and 16 by authorizing 25 year lease agreements. As DNR stated in response to Nabors' previous comment, under AS 38.05.070(b) the State is unable to issue a negotiated lease unless the appraised value of the transaction is \$5,000 a year or less.

If Nabors is the winning bidder in DNR's proposed auction they would benefit greatly from their status of lessee. Under a land lease Nabors would have long-term property rights; Nabors would have the ability to expand and develop their lease tract(s) to accommodate their expanding ANS operations and would be eligible to apply for preference rights at the expiration of their lease term.

***Nabors Comment 3. Lack of Available Property:***

*“Lack of Available Property – The State of Alaska owns, and through DNR and DOT, manages vast ANS holdings, yet has made only a limited amount of that property available for lease. The present inadequate inventory of available properties is demonstrated by a rise in demand in recent years, and an alarming raise in lease rates. Nabors has a reasonable expectation that the State make available for lease sufficient property for use by industry in conjunction with the development of Alaska's natural resource. In the absence of the availability of such property, Nabors and other similarly-situated operators will not be in a position to efficiently and effectively operate, in turn resulting in a negative economic impact up on the industry as a whole. The DNR should not view the benefits of escalating lease rates to the exclusion of the overall negative impacts of the lack of an adequate inventory of available properties necessary for industry to thrive and succeed. The best interests of the State are served by making sufficient property available to meet the needs of industry. In this regard, Nabors requests that the State take a proactive role in monitoring and managing the level of the available inventory of ANS lease properties, and put into place policies which ensure an adequate level of available properties.*

*On the near term, Nabors is concerned that, if it is required to vacate the Frontier Pad, it will not have a place to go. For the reasons stated above, Nabors respectfully*

*requests that DNR consider renewing the present Nabors use permit until such time as adequate alternatives are made available to Nabors."*

**DNR Response:** DNR acknowledges Nabors comment and concerns regarding the lack of available State land. Nabors does have additional options for State land within the North Slope. Currently Energy Coating Pad near East Dock and Service City Pad in Prudhoe Bay are available as storage sites under a Land Use Permit.

DNR is aware that a new subdivision on the North Slope would be appreciated. Yet such a subdivision would require extensive planning, survey, appraisal and approval by the North Slope Borough Platting Department. This process would take a long time and considerable funds to complete. These funds must be allocated by the Legislature. If Nabors, or any other interested party, is interested in leasing a single tract of undeveloped State land they could apply for it to be leased. They would then complete the process of having it surveyed, appraised and approved by the North Slope Borough Platting Department. Once that has been completed the State would be able to adjudicate a competitive lease sale for that parcel.

Additionally, DNR is in the process of transferring more State land to the North Slope Borough under the Municipal Entitlements program. Some of these lands may be available in the future. Other parcels may be available from the borough or DOT/PF. If Nabors, or any other interested party, is in need of additional land for use immediately they could inquire regarding the availability of land with the North Slope Borough or DOT/PF Airport Leasing.

Nabors again asks DNR to not offer Tract 14, 15, and 16 up for auction and competitive lease but instead asks that their temporary Land Use Permit be extended. Article VIII, § 1 of the Alaska Constitution states, "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest." The total usable acreage available for industrial use on Tracts 14, 15 and 16 is 28.95 acres. Nabors' current Land Use Permit only utilizes 11.57 acres. If DNR continues to use all of Tracts 14, 15, and 16 under a temporary Land Use Permit when the demand for long-term development of State land within Deadhorse is high then DNR is not achieving what the Alaska Constitution requires.

***Nabors Comment 4. Frontier Pad as Single Unit:***

*"Frontier Pad as Single Unit – For the past 25 years the Frontier Pad has been used and occupied as a single unit, starting in 1974 with Frontier's occupancy, and thereafter transitioning to Nabors' use beginning in the early 1990's. As one of the most active drilling contractors in Alaska, Nabors utilizes the Frontier Pad as a stage for its ANS operations, and to store a large inventory of drilling related equipment. Such use exemplifies the needs of Nabors and other similarly-situated ANS operators for large parcels of land to effectively conduct operations. Correspondingly, it appears to Nabors that there is diminishing availability of large ANS tracts which are suitable for the needs of large operators. For example, of the five comparable properties used in the DNR Appraisal Report, four range in size from only 3.88 to 13.62 acres. As indicated above, it is in the best interest of DNR and other government entities owning and managing ANS properties to ensure that industry has a reasonable opportunity to conduct their operations on the ANS. Based upon the lack of presently available suitable properties upon which operators such as Nabors can effectively conduct their business, Nabors is concerned that it may only have reasonable alternatives in this regard.*

*Should DNR decide to proceed with the proposed lease of the Frontier Pad, Nabors requests that DNR offer the Frontier Pad for lease as a single unit. This proposal*

*would serve to foster an appropriate mix of large parcels available for use in the Deadhorse market.”*

**DNR Response:** DNR accepts Nabors comment and acknowledges their presence as an essential drilling company on the North Slope. The Frontier Pad was established in the Deadhorse Subdivision by ASLS 76-227 as three separate lease Tracts known as Tract 14, 15, and 16. In 1974 it was in the State's best interest for Frontier to occupy all three lease tracts as one parcel. Yet as previously mentioned, Article VIII, § 1 of the Alaska Constitution states, “It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.” The total useable acreage available for industrial use on Tracts 14, 15 and 16 is 28.95 acres. Nabors current Land Use Permit only utilizes 11.57 acres. Nabors currently only uses 39.96% of the useable tract space. The State does not believe that this best utilizes the need for large parcels of State land.

This proposed action would not restrict Nabors from bidding for more than one parcel. Under a lease agreement Nabors could fill additional land on tracts 14, 15 and 16 to create larger area of pad for the use of staging large operations and storing inventory for drilling related equipment.

In response to Nabors' third comment on the limited availability of large tracts of State land, DNR noted that the Service City Pad, which is 43 acres, in Prudhoe Bay has been available for lease for over 10 years. DNR has not received any applications for lease or permit for this site in that time.

***Nabors Comment 5: Gravel Pad Value:***

*“It is Nabors' understanding that the minimum bid established for the proposed lease auction of the Frontier Pad will be based upon the Market Value Appraisal Report No. 3551 (Report), recently completed by DNR. In reviewing the Report, it has come to Nabors' attention that one of the assumptions made is the value of gravel pads at \$20 per cubic yard. The Nabors' recent experience that this assumption overstates gravel pad value, with a more realistic actual cost associated with gravel pad installation being more appropriately in the range of \$12 to \$16 per cubic yard. Nabors requests that the appraiser reconsider its gravel pad value assumption with this more appropriate range in mind”.*

**DNR Response:** The gravel cost identified in the report is based on the data within the most recent North Slope Lease Tract appraisals. According to these appraisals, the gravel costs could be as high as \$35 per cubic yard. However, the contributory value of gravel pads has consistently been estimated in the \$18.00 to \$20.00 per cubic yard range in the past year. Importantly, this is an allocation that is intended to reflect the contributory value of the gravel in respect to market value; which does not always correlate to cost.

Recent sub-leases and auctions indicate that lessees are willing to pay significantly more than the cost of a new pad for the immediate use of existing pads. While these bids may have reflected a business decision on the part of the lessee, some weight must be given to the fact that price behavior is being affected by the time required for pad development. Even though \$20.00 per cubic yard may be considered on the upper end of the cost range for new gravel pads by some market participants, it still represents a potential cost for the improvement. It is in the range for a new pad and not an unreasonable conclusion considering the high demand for existing pads. The appraiser should not conclude at the extreme low end of cost of a new pad when market participants have been paying significantly more than cost for existing pads.

Moreover, the most predominate cost new that has been used in the recent past is \$18-\$20 per CY.

***Nabors Comment 5: Transition Coordination and Support:***

*"In the event that DNR decides to proceed with the proposed leases and Nabors is not the successful bidder at the lease auction on any one of the subject tracts, Nabors will need time before the commencement of the lease with the successful bidder to relocate its personal property to another suitable location. In this eventuality, Nabors will be in the untenable position to be forced to move its substantial properties, but having no suitable place to go. Therefore, at a minimum, Nabors will require the cooperation of DNR in identifying a large tract suitable for Nabors' needs, which will be available for occupancy within the relevant time frame.*

*Nabors requests that DNR join with Nabors in developing, adopting and implementing a transition plan to be employed in the event that Nabors is required to move from the Frontier Pad."*

**DNR Response:** DNR acknowledges Nabors' comment and their concern at the prospect of having to move all of their equipment to a new location. If Nabors is not the successful bidder for lease Tracts 14, 15 or 16 DNR will provide adequate time for Nabors to clear the lease tracts. DNR will work to meet the needs of Nabors as well as the needs of the new lessees of the lease tracts.

DNR has explained and detailed several other land permitting or leasing options that are available to Nabors in previous comments.

**Environmental Risk Assessment**

Without knowing who the successful bidders will be, it is impossible to know exactly what activities will take place on these lease tracts. However, it is likely that the uses would be for industrial sites in support of oil and gas development. Activities would include construction and use of gravel pads, maintenance shops, equipment storage buildings, and maintenance and storage of heavy civil construction and drilling equipment. Some hazardous substances, including diesel, motor oil and various solvents and fluids necessary for equipment maintenance, may be stored onsite in appropriate containers. In other cases, substantial quantities of chemicals used in drilling and maintaining wells and pipelines may be stored. There is some environmental risk from these kinds of activities, including equipment malfunctions or operator error. This risk would be minimized by following standard fuel containment procedures as described in the attached special stipulations, stipulation 11, through review and approval of development and operating plans, and through calculating and posting of the performance guaranty.

**Development Plan / ACMP Review**

Prior to construction of improvements or commencement of business activities the lessee shall file a development and operating plan with the lessor. The submitted development plan will undergo review and must be found consistent with ACMP standards before it will be approved. The Special Provisions in Attachment A are proposed for inclusion in the lease contract, additional stipulations may be required depending upon the use and specific lease development plans submitted.

**Ownership of Fill Material**

Per Provision 2 of Attachment A, any fill material, pavement, or similar improvements placed by the lessee will become part of the real property they are appurtenant to and thus become State-owned. This does not include buildings, towers, antennas, or other similar structures.

**Economic Benefits**

Article VIII, § 1 of the Alaska Constitution states, "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for

maximum use consistent with the public interest." Granting a lease for Tracts 46A and 53 of the North Slope Lease Tracts is consistent with this policy.

If these properties are leased, the leases would be issued to the highest bidder. The state would receive rental for the use of this state land that is at least equal to the appraiser's estimate of the fair market lease value.

**Discussion**

In adjudication of a lease, DNR seeks to facilitate long-term development, conservation and enhancement of state lands for present and future Alaskans while minimizing disturbance to vegetative, hydrologic and topographic characteristics of the area that may impair water quality and soil stability.

The issuance of these leases would generate revenue for the State and provide support for North Slope resource development. They would provide the successful bidders with the assurance of future use by having a lease rather than a short-term land use permit. Because these tracts are currently developed and in use, are located within an existing industrial area, and must be developed and operated in accordance with approved development and operating plans, there should be no substantial new adverse environmental impacts from the issuance of these leases.

In concurrence with AS 38.05.075(a), which dictates that lease compensation method shall be designed to maximize the return to the State of Alaska; DNR will offer competitive leases for Tracts 14, 15, and 16 at a public auction conducted via sealed bids.

  
\_\_\_\_\_  
Kathleen M. Klynstra  
Natural Resource Specialist III

11/20/09  
\_\_\_\_\_  
Date

**Decision**

The finding presented above has been reviewed and considered. The case files have been found to be complete and the requirements of all applicable statutes have been satisfied. The proposed action encourages the development of state lands and maximizes economic benefit to the State of Alaska. It is the finding of the Northern Regional Manager that it is in the best interests of the State to offer long-term leases for ADLs 418671, 418673 and 418674 and to proceed with a sealed bid auction as described above under the authority of AS 38.05.035(e), AS 38.05.070, AS 38.05.075, and 11 AAC 58.

  
\_\_\_\_\_  
Chris Milles  
Regional Manager

11/20/09  
\_\_\_\_\_  
Date

**Appeal**

A person affected by this decision who provided timely written comment on this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received **by December 10, 2009** and may be mailed or delivered to Tom Irwin, Commissioner, Department of Natural Resources, 550 W. 7<sup>th</sup> Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov). If no appeal is filed by that date, this decision goes into effect as a final order and decision **on December 21, 2009**. 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.

## Attachment A

### Special Provisions:

1. **Performance Guaranty.** The lessee shall provide a surety bond or other form of security acceptable to the Division payable to the State of Alaska. Such performance guaranty shall remain in effect for the term of this Lease and shall secure performance of the Assignee's obligations hereunder. The amount of the performance guaranty may be adjusted by the Authorized Officer upon approval of amendments to this Lease, changes in the development plan, upon any change in the activities conducted or performance of operations conducted on the premises. If Assignee fails to perform the obligations under this Lease within a reasonable time, the State may perform Assignee's obligations at Assignee's expense. Assignee agrees to pay within 20 days following demand, all costs and expenses reasonably incurred by the State of Alaska as a result of the failure of the Assignee to comply with the terms of this Lease. The provisions of this Lease shall not prejudice the State's right to obtain a remedy under any law or regulation. **Failure by the Lessee to provide replacement security, upon notice of non-renewal of an existing form of security, shall be grounds for Lessor to make a claim upon the existing security to protect the Lessor's interests.** If the authorized officer determines that the Assignee has satisfied the terms and conditions of this Lease the performance guaranty may be released.
  
2. **Placement of Development Materials.** When placed on the Premises by the Lessee, fill material, gravel, and pavement, including building pads, parking areas, driveways, and similar structures:
  - a. Become a part of the realty and property of the state
  
  - b. Must be maintained by the lessee
  
  - c. May not be removed from the Premises by the Lessee without the prior written approval of the Lessor.
  
3. **Insurance.** The lessee 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 the lessee and the lessor (the State, its officers, agents and employees). Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the lessee's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the lessor prior to occupancy. The certificate must provide for a 60-day prior notice to the State in the event of cancellation, nonrenewal or material change of conditions. Failure to furnish satisfactory evidence of insurance or lapse of the policy are material breaches of this permit and shall be grounds, at the option of the State, for termination of the lease. All insurance policies shall comply with, and be issued by, insurers licensed to transact the business of insurance under Alaska Statute, Title 21.

**Commercial General Liability Insurance:** Such policy shall have minimum coverage limits of \$1,000,000 single limit per occurrence and \$2,000,000 general aggregate. 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 must be named as an additional named insured on the policy with respect to the operations of the lessee on or in conjunction with the leased premises.

4. **Alaska Historic Preservation Act.** The lessee shall consult the Alaska Heritage Resources Survey (907) 269-8721 so that known historic, archaeological and paleontological sites may be avoided.

The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation (907) 269-8721 and shall be notified immediately.

5. **Site Restoration.**

- a. Upon expiration, completion, or termination of this lease, the site shall be vacated and all improvements, personal property, and other chattels shall be removed (except as modified by Special Provision 2, herein), or they will become the property of the state.
- b. The site shall be left in a clean, safe condition acceptable to the lessor. All solid waste debris and any hazardous wastes that are used and stored on the site shall be removed and backhauled to an ADEC approved solid waste facility.
- c. A Restoration Plan must be approved by the lessor at least 30 days prior to expiration, completion, or termination of this lease, whichever is sooner.

6. **Inspection.**

- a. Authorized representatives of the State of Alaska shall have reasonable access to the subject parcel for purposes of inspection.
- b. The lessee may be charged fees under 11 AAC 05.010(a)(7)(M) for routine inspections of the subject parcel, inspections concerning non-compliance, and a final close-out inspection.

7. **Compliance with Governmental Requirements; Recovery of Costs.** Lessee shall, at its expense, comply with all applicable laws, regulations, rules and orders, and the requirements and stipulations included in this lease. Lessee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.

8. **Change of Address.** Any change of address must be submitted in writing to the lessor.

9. **Destruction of Markers.** All survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, and unsurveyed lease corner posts shall be protected against damage, destruction, or obliteration. The lessee shall notify the lessor of any damaged, destroyed, or obliterated markers and shall reestablish the markers at the lessee's expense in accordance with accepted survey practices of the Division of Land.

10. **Development Plan.** Prior to the construction of improvements or commencement of business activities the lessee shall file a development plan with the lessor. The lessee shall not commence construction or new business activities until the lessor approves the development plan.
11. **Fuel and Hazardous Substances.** Secondary containment shall be provided for fuel or hazardous substances.

- a. **Container marking.** All independent fuel and hazardous substance containers shall be marked with the contents and the lessee's name using paint or a permanent label.
- b. **Fuel or hazardous substance transfers.** Secondary containment or a surface liner must be placed under all container or vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fuel or hazardous substance transfers. Appropriate spill response equipment must be on hand during any transfer or handling of fuel or hazardous substances to respond to a spill of up to five gallons. Transfer operations shall be attended by trained personnel at all times.

Vehicle refueling shall not occur within the annual floodplain or tidelands. This restriction does not apply to water-borne vessels provided no more than 30 gallons of fuel are transferred at any given time.

- c. **Storing containers within 100 feet of waterbodies.** Containers with a total capacity larger than 55 gallons which contain fuel or hazardous substances shall not be stored within 100 feet of a waterbody.
- d. **Exceptions.** The lessor may under unique or special circumstances grant exceptions to this stipulation on a case-by-case basis. Requests for exceptions should be made to the lessor.
- e. **Definitions.**

**"Containers"** means any item which is used to hold fuel or hazardous substances. This includes tanks, drums, double-walled tanks, portable testing facilities, fuel tanks on small equipment such as light plants and generators, flow test holding tanks, slop oil tanks, bladders, and bags. Manifolder tanks or any tanks in a series must be considered as single independent containers. Vehicles, including mobile seismic tanks, are not intended to be included under this definition.

**"Hazardous substances"** are defined under AS 46.03.826(5) as (a) an element or compound which, when it enters the atmosphere, water, or land, presents an imminent and substantial danger to the public health or welfare, including fish, animals, or vegetation; (b) oil; or (c) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

**"Secondary containment"** means an impermeable diked area or portable impermeable containment structure capable of containing 110 percent of the volume of the largest independent container. Double-walled tanks do not qualify as secondary containment unless an exception is granted for a particular tank.

**"Surface liner"** means any safe, non-permeable container (e.g., drips pans, fold-a-tanks, etc.) designed to catch and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume based on worst-case spill risk.

12. **Impermeable Revetments.** The lessee is responsible for ensuring that the impermeability of the revetments is maintained at all times. Prior to July 1 of each year, the lessee shall inspect all revetments located on the pad for the purpose of determining the revetments' impermeability. If a revetment is in need of repair or replacement, lessee shall identify the corrective measures to be taken. The lessee shall complete all corrective measures by July 31 of each year. Impermeable revetments that allow or may allow release of collected liquids or solids shall not be used until repaired or replaced.
13. **Environmental Compliance.**
  - a. **Audits.** At all reasonable times, without notice, the lessor may perform inspections of the parcel, the improvements, and activities conducted thereon. The lessor may obtain samples of soil, water, gravel, or other solids or liquids on the parcel, including from within buildings, as long as the taking of such samples does not unreasonably disrupt the activities of lessee on the parcel. If the inspection reveals hazardous substances in excess of that permitted by applicable law, the lessee, at its expense, shall promptly commence and diligently prosecute the appropriate assessment and remedial action, including, without limitation, the preparation of sampling and cleanup plans and implementing and completing cleanup, if any. The assessment and remedial action plans shall be provided to and approved by the lessor.
  - b. **Disclosure.** At any time upon lessor's written request, lessee shall promptly make all documents and other information available to lessor for copying and inspection as reasonably needed by lessor to determine lessee's compliance with applicable state and federal environmental laws.
14. **Separation Distance.** The lessee shall maintain a minimum distance of 100 feet from all North Slope oil production facilities. The placement of buildings shall meet the intent of 49 CFR 192 Subpart O Pipeline Integrity Management.
15. **Sublease and Rental Agreements.** The lease shall be subject to a provision which allows the Lessor the right to require an increased annual compensation as a condition of a sublease approval. Said increase shall be determined by negotiation between the Lessee and Lessor, but shall not be less than 25% of all compensation paid annually to the Lessee by the Sub-lessee. Neither the terms of this sublease provision nor any actual compensation derived from a sublease shall have any effect upon a determination of appraised market value pertaining to AS 38.05.840 and/or this lease parcel. Sublease shall be defined to include any lease, rental, storage or accommodation agreement between the Lessee and another individual, business or corporation utilizing or benefiting from the lease parcel. Sub-lessee shall be defined to mean any individual, business or corporation executing an agreement, as above, with the Lessee. The amount of sublease compensation shall be subject to change at the same time as the lease compensation adjustment discussed above, and whenever the terms or conditions of the agreement between the Lessee and sub-lessee change. Approval of a sublease shall also be conditioned upon:
  - a. submission by the Lessee of a signed copy of the agreement(s) which govern the relationship and compensation provisions between the Lessee and the Sub-lessee;

- b. submission by the Lessee of a complete plan of operations and development for the subleased area and, if necessary, an amended plan of operations and development for the entire lease area; and
  - c. a Lessor best interest finding and amendments to the lease contract as necessary, if significant changes to the use and development are proposed.
16. **Rent Adjustments.** In accordance with AS 38.05.105, the lease compensation is subject to adjustment by the Lessor at the commencement of the sixth year of the term and every fifth year thereafter (the "adjustment date"). The compensation adjustment takes effect on the applicable adjustment date, regardless of whether the adjustment determination occurs before or after that date. All reasonable costs of the adjustment, including reappraisal if required by the Lessor, will be borne by the Lessee.
17. **Building Setback.** Development plans for new building construction and when built shall reflect a setback of a minimum distance of 50 feet from the road frontage lot line and 100 feet from the Ordinary High Water of the unnamed lake.
18. **Notification.** The Lessee shall notify the Lessor of all spills that must be reported under 18 AAC 75.300 under timelines of 18.AAC 75.300. All fires and explosions must be reported to the Lessor immediately. The Lessor's 24 hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. The DEC oil spill report number is (800) 478-9300. The Lessor and DEC shall be supplied with all follow-up incident reports.
18. **Bear Protection.** All food, food containers, garbage, and any other bear attractants shall be maintained in appropriate bear proof containers or structures. The lessee is responsible for ensuring that all such materials placed or discarded on the premises are immediately removed to appropriate storage.