

PROPOSED COMPETITIVE LEASES
ADLs 418671, 418673, 418674
Preliminary Finding and Decision

Proposed Action

The Department of Natural Resources, Division of Mining, Land and Water is proposing to lease three Tracts 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 for these sites.

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

Scope of the Review and Proposed Finding

The scope of this preliminary finding and decision is to consider long-term land use and provide preliminary approval of 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.

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.

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.

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.

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.

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.

An appraisal is required and will be completed by DNR. An auction cannot take place until after the appraisal has been completed, reviewed and approved. The appraised value will include the price of the existing State-owned gravel pads.

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 would 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.

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 responses were received:

Alaska Department of Fish and Game (ADF&G): No Objection
Alaska Department of Environmental Conservation (ADEC): No Comment
North Slope Borough: No Comment
ADNR Archaeology & Historic Preservation: No Comment
Fish & Wildlife Service: No Comment
Division of Oil & Gas (DOG): No Comment
Alaska Department of Transportation (ADOT): No Comment
Corps of Engineers: No Comment
Division of Coastal and Ocean Management: No Comment

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. 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, and through the 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 plan with the lessor. The submitted development plan will undergo review and must be found consistent with ACMP standards before it will be approved.

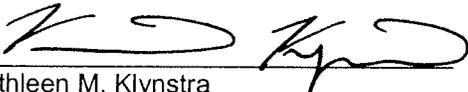
Ownership of Fill Material

Per Provision 2 of Attachment A, any fill material, pavement, or similar structures 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.

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 either currently developed and in use, are located within an existing industrial area, and must be developed and operated in accordance with approved development plans, there should be no substantial new adverse environmental impacts from the issuance of these leases.

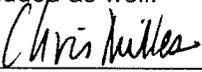

Kathleen M. Klynstra
Natural Resource Specialist

8/21/09
Date

8/21/09

Proposed Decision

I find that the proposed action may be in the state's best interest and it is hereby approved to proceed with public notice. The Special Provisions in Attachment A are proposed for inclusion in the lease contract. Additional stipulations identified during the public notice period may be included as well.


Chris Milles
Regional Manager

8/25/09
Date

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 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.
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.