

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

PRELIMINARY DECISION

ADL 231932

Eugene Johnson

dba

Johnson Investments

Application for Lease

AS 38.05.070(b)

This Preliminary Decision (PD) is the initial determination on a proposed disposal of interest in state land and is subject to comments received during the public notice period. The public is invited to comment on this PD. The deadline for commenting is **5:00 PM November 9, 2018**. Please see the Comments section of this decision for details on how and where to send comments for consideration. Only the applicant and those who comment have the right to appeal the Final Finding and Decision (FFD).

Proposed Action:

The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Regional Office (SCRO) has received a request from Eugene Johnson dba Johnson Investments (Johnson Investments) to lease 2.48 acres of state land for 55 years at approximately mile-post 88 of the Parks Highway, near Willow, Alaska. The location of the project area is further described as being within the NW1/4 of the NW1/4 of Section 36, Township 22 North, Range 4 West, Seward Meridian. Johnson Investments is proposing to use this site as a commercial recreational site for fishing, sightseeing and launching rafts on the Kashwitna River.

SCRO is considering the issuance of a 10-year commercial land lease to Johnson Investments for the construction, use, operation, and maintenance of a commercial recreational site on the Kashwitna River. SCRO would issue an Entry Authorization (EA) for the site prior to lease issuance to allow for the required appraisal.

Scope of Review:

The scope of this decision is to determine if it is the State's best interest to issue ADL 231932.

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; AS 38.05.070(b) Generally; and AS 38.05.945 Notice.

The authority to execute the FFD, the EA, and the lease has been delegated to the Regional Managers of DMLW.

Administrative Record:

Case file ADL 231932 constitutes the administrative record for the Johnson Investments lease application.

Legal Description, Location, and Geographical Features:

The state land where this proposed lease site is located is described as follows:

- **Legal description:** Lot 1 in Block 1, Kashwitna River Recreational Lots, 2.48 acres, according to Alaska State Land Survey (ASLS) No. 2004-2
- **Geographical location:** Approximately milepost 88 Parks Highway
- **Approximate Lat/Long:** 61.9579 N, 149.9397 W
- **Area geographical features:** The area is characterized as having rolling topography
- **Existing surveys:** ASLS 2004-2
- **Municipality/Borough:** Matanuska Susitna Borough
- **Native Corporations/Federally Recognized Tribes:** Cook Inlet Region, Incorporated
- **Size:** 2.48 acres

Title:

The State of Alaska holds fee title to the subject land under U. S. Patent No. 1220720 dated June 20, 1961. A DNR Title Report (RPT-11011) issued on August 3, 2018, from DMLW's Realty Services Section attests that aside from the usual reservations for ditches, canals, railroads, telegraph and telephone lines, and water rights, there no other reservation within the proposed lease site.

Third Party Interests:

There are no known third party interests.

Classification and Planning:

The project area is subject to the 2008 Southeast Susitna Area Plan, Kashwitna Region, Management Unit K35 p. 3-60, map number 2. The classification for this site is Public Recreation Land. Land classified public recreation is land that is suitable for:

- 1) recreation uses, waysides, parks, campsites, scenic overlooks, hunting, fishing, or
- 2) boating access sites, trail corridors, or greenbelts along bodies of water or roadways.

As Johnson Investments is proposing to use this site as a boating access site and picnic site it is consistent with the area plan and classification.

Traditional Use Findings:

The proposed lease is within an organized borough, therefore under AS 38.05.830, traditional use findings are not required.

Access:

This site is accessible by the road system via Kashwitna View Circle, at mile-post 88 on the Parks Highway, approximately four miles east from Caswell, Alaska.

Access Along Navigable and Public Waters

Nearly all shore and tide lands in the State of Alaska are subject to an Along easement (AS 38.05.127 and 11 AAC 51.045). The purpose of this easement is to uphold the constitutional right of the public to have free access to, and use of, the State's waterways. At the proposed lease site, the Along easement is 50 feet above and below the Mean High Water.

Public Trust Doctrine:

Pursuant to AS 38.05.126, all authorizations for 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, SCRO is reserving the right to grant other authorizations to the subject area consistent with the Public Trust Doctrine.

Agency Review:

An agency review was conducted on June 14, 2017. The deadline for agency comments was July 5, 2017.

The following agencies were included in the review:

- DNR DMLW - Mining
- DNR DMLW - Water
- DNR Office of History and Archaeology/State Historic Preservation Office
- DNR Land Sales
- DNR Division of Oil and Gas
- DNR Natural Resource Conservation and Development Board
- DNR Realty Services
- Department of Fish and Game (ADF&G) - Habitat
- ADF&G - Wildlife Conservation
- Department of Environmental Conservation (DEC)
- Department of Transportation and Public Facilities
- Department of Commerce, Community and Economic Development Regional Affairs
- Matanuska Susitna Borough
- National Oceanic & Atmospheric Agency

- U.S. Coast Guard
- U.S. Fish & Wildlife
- U.S. Environmental Protection Agency
- U.S. Army Corp of Engineers
- Upper Susitna Soil and Water Conservation District

SCRO received three comments during the Agency Review.

ADF&G Comment:

“ADF&G has no objection to the issuance of this lease, however, there is the potential for streambank erosion and habitat degradation due to the repeated launching of rafts and foot traffic at this site. ADF&G recommends that the applicant take photos of the launch site at the beginning and ending of each season to document the impacts. Should erosion become a problem, geogrid, light penetrating boardwalks, or other bank stabilizing methods should be used to prevent further damage. Any structures or materials placed below the ordinary high water will need a permit from the Division of Habitat.”

SCRO Response:

SCRO agrees with the potential for bank erosion. The lessee will be required to provide current pictures of the site prior to and after each season of use.

Matanuska Susitna Borough Comment:

“This parcel does not have identified floodplain on the lot although it is adjacent to the river. We would encourage all development to be reasonably safe from flooding. In this case, they do not need a floodplain development permit.”

SCRO Response:

“Johnson Investments will be required to build any improvements as safe from flooding as possible, and to monitor the site during any extra ordinary high water event.”

DEC Comment:

“Our Water Division, Wastewater Discharge Engineering Support & Plan Review Section note that the “holding septic tank for an outhouse” sounds like a vault privy under DEC regulations and would require plan review and approval through the wastewater program. There is also a 100-foot setback requirement that would apply between the wastewater holding tank and the nearby surface water (Kashwitna River) or a waiver of the 100-foot setback could be requested as part of the plan review package.”

SCRO Response:

Johnson Investments will be required to obtain any required permits from other agencies to comply with local, state and federal laws. Any wastewater system will require a review by DEC to be allowed and the system will be setback a minimum of 100 feet from the Kashwitna River.

Lease Discussion:

On June 4, 2008, Lot 1 of the Kashwitna River Recreational Lots subdivision was offered in the land sales auction program under ADL 230019. The lands encompassed by ADL 230019 were classified as Settlement. The parcel was sold during the 2008 sealed bid auction but was relinquished in 2009. The parcel was placed back in the potential reoffering pool but on May 13, 2016, ADL 230019 was suspended and reclassified as Public Recreation Lands due to the parcel being possibly prone to flooding and generally unsuitable as settlement lands.

On June 13, 2014, Johnson Investments applied to lease a 2.48-acre parcel for 55 years for a public recreational site. Johnson Investments is proposing to create a 50-foot by 50-foot parking area for approximately 6 vehicles with trailers. The site will be used to launch rafts on the Kashwitna River for fishing and general sightseeing.

Johnson Investments is proposing to build a 20-foot by 30-foot open air wooden gazebo with a small enclosed fire pit. Johnson Investments proposes to build a holding tank outhouse to be pumped annually. DEC has stated this will require DEC review and approval.

SCRO is considering the issuance of a 10-year commercial land lease to Johnson Investments for the construction, use, operation, and maintenance of a commercial recreational site for launching rafts on the Kashwitna River. SCRO would issue an EA for the appraisal and construction of the site prior to lease issuance. The parking lot will be required to be maintained, including regular refuse pick-up and maintenance of restroom facilities.

Johnson Investments is proposing to utilize the gravel on the lease site to build the parking lot and hand boat launch ramp. Pursuant to AS 38.05.565(3), Johnson Investment will be required to pay \$3.00 per cubic yard for the material used from the leasehold to construct the parking lot and hand boat launch ramp as per the development plan.

AS 38.05.565(3) states, a holder of a permit, land lease, or right-of-way issued by the department, if the materials to be extracted and removed during the construction, use, or maintenance of a facility authorized by a permit, land lease, or right-of-way, are necessary and incidental to the primary purpose of the permit, land lease, or right-of-way, and the materials are put to beneficial use in a way that alters the character, usefulness, or availability of the materials in their native forms; the department may authorize the sale of materials under terms of the permit, land lease, or right-of-way; sales of materials under this paragraph must be at:

- (A) the representative regional sales price established under AS 38.05.550(d)(1) unless the sale is to a state or federal agency, political subdivision, or other entity under AS 38.05.810(a)

Johnson Investments will be required to supply a material sales development plan and a Reclamation Plan for the gravel area before EA issuance. Johnson Investment will need to account for the amount of material used per year, material sales payment will be due December 31st of each year the material is extracted. Johnson Investments may need a conditional use permit issued by the Matanuska Susitna Borough. It is recommended the client conducts test hole exploration to determine sufficient quality and quantity of material prior to applying for a material sale. If exploration takes place, the department requests a copy of the results.

Johnson Investments is ultimately responsible for reclamation and compliance with our material sale stipulations, even if a contractor works within the proposed authorization.

This proposed lease was subject to Directors Order No. 143 (DO 143) pertaining to authorizations on School Trust Lands. DO 143 required Fair Market Value transactions for authorizations located on School Trust lands. DO 143 has now been rescinded and the School Trust Litigation has been settled.

The proposed lease will be subject to the terms of SCRO's standard lease document (available for review upon request) and any stipulations based, in part, upon the following considerations.

Development Plan:

The Development Plan (DP) attached to this decision (Attachment A) and dated June 6, 2017, is under consideration by SCRO. Should the proposed lease be granted, it is anticipated that the DP will need to be updated throughout the life of the lease as activities and/or infrastructure are added or subtracted. All updates must be approved, in writing, by SCRO before any construction, deconstruction, replacement of infrastructure, or change in activity. SCRO reserves the right to require additional agency review and/or public notice for changes that are deemed by SCRO to be beyond the scope of this decision.

Hazardous Materials and Potential Contaminants:

The possible waste and contaminants for this site will consist of human waste, general trash and possible oil contamination from vehicles parked at the site. Human waste will be disposed of in an outhouse or other approved privy. Regular maintenance of outhouses or other approved privy will be required. General trash will be disposed of in one or more onsite bear proof trash bin. The parking lot and bear proof trash bins will be checked weekly at a minimum.

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 site and disposed of in accordance with state and federal law.

Lease Performance Guaranty (bonding):

In accordance with AS 38.05.035, AS 38.05.860, and 11 AAC 96.060(a) Performance Guaranty, Johnson Investments will be required to submit two performance guaranties for the lease site.

- **\$2,000.00 EA Cash Bond:** This bond will serve as a default to be forfeited, all or in part, if the applicant fails to submit the appraisal, or other documentation necessary for the issuance of the lease by the required due dates.
- **\$9,500.00 Performance Bond:** This bond will remain in place for the life of the proposed lease. The bond amount is based upon the level of development, amounts of hazardous material and substances on site, and the perceived liability to the State. This bond will be used to ensure the applicant's compliance with the terms and conditions of the lease issued for their project. This bond amount will be subject to periodic adjustments and may be adjusted upon approval of any amendments, assignments, reappraisals, changes in the DP, changes in the activities conducted, or changes in the performance of operations conducted on the authorized premises, and as a result of any violations to one or more of the authorizations associated with this project.
- **Reclamation Bond:** SCRO is reserving the right to require a reclamation bond due to noncompliance issues during the term of the lease or near the end of the life of the project.

Insurance:

In accordance with 11 AAC 96.065 Insurance, Johnson Investments will be required to submit proof of liability and worker's compensation insurance to SCRO, with the State of Alaska listed as a "NAMED" insured party. Johnson Investments will be responsible for maintaining such insurance throughout the term of the EA and the lease.

Survey:

The parcel is already surveyed, ASLS N0. 2004-2.

Compensation and Appraisal:

In accordance with AS 38.05.840, state-owned land may only be leased if it has been appraised within two years before lease issuance. SCRO has coordinated with DMLW's Appraisal Unit, and Johnson Investments will be required to provide an appraisal of the site before the proposed lease will be issued. All costs associated with the appraisal will be borne by the applicant. Once the appraisal has been approved by DMLW, the annual lease fee will be set at the fair market value of the proposed leasehold or **\$2,160.00**, whichever is greater. The minimum rental amount of **\$2,160.00** is based on the current fee schedule (Report No. 2618-13). Fee schedule parcels must meet the following criteria,

1. The site is no larger than five (5) acres and is located in a remote area; and
2. must be accessible only by light aircraft, helicopter, and/or foot; and
3. public utility systems are not available; and
4. there is no apparent competition for the site.

This proposed lease does not fit within all the parameters of the fee schedule, as it is accessible by an established road, therefore an appraisal is necessary. Furthermore, in accordance with AS 38.05.105, the proposed EA and lease will be subject to reappraisal at five-year intervals after the issuance of the proposed authorization.

This parcel is within the Matanuska Susitna Borough and the representative regional sales price for material within the borough is currently **\$3.00** a cubic yard.

Entry Authorization:

SCRO is proposing to authorize Johnson Investments entry onto state land through the issuance of an EA while they are completing the required appraisal for the site. The proposed EA will be issued after the FFD goes into effect and Johnson Investments has received any permits required by the borough and DEC. The effective date of the EA will be the start of the lease term length.

The estimated annual fee for the proposed EA is **\$2,160.00** per year. Should the appraisal indicate that the value of the land is greater than anticipates, the shortfall must be remedied before the lease will be issued.

Subleasing:

Subleasing is permissible through AS 38.05.095, if the proposed lease is approved. A sublease is defined as improvements not owned by the lessee that are located within the leasehold on the land or located on structures owned by the lessee. A sublease pertaining to the proposed lease includes but is not limited to, user agreements, license agreements, communication site agreements, or any contracts between the lessee and other commercial entities. All potential subleases must first be approved in writing by SCRO. Depending on the activity of any potential subleases, SCRO is reserving the right to reevaluate the need for further agency review and/or public notice before making a determination on the appropriateness of the proposed sublease. Sublease compensation to the State will be determined by SCRO according to AS 38.05.073(m), under the authority of AS 38.05.075(a) Leasing Procedures. In any case, the sublease fee for commercial activities will not be less than 25% of the annual fee paid to leaseholder by the sublessee.

Assignment of Lease:

The proposed lease, if issued, may be transferred or assigned to another individual or corporation only with written approval from the State of Alaska. A lease will not be assigned to an entity if that entity does not meet the statutory requirements of the lease, or if the lessee is considered not to be in "good standing" with this or any other agency authorization.

Reclamation:

In accordance with AS 38.05.090(b), all lessees must restore their leased sites to a “good and marketable condition” within 120 days after the termination of their leases. What level of reclamation constitutes as being “good and marketable” is at the discretion of SCRO.

Public Notice of the Preliminary Decision:

Pursuant to AS 38.05.945, this PD will be advertised for 30-day public comment period. Notice will be posted on the Alaska Online Public Notice System at <http://aws.state.ak.us/OnlinePublicNotices/Default.aspx> and the post offices located in Willow, Houston, and Wasilla. Courtesy notices will also be mailed or emailed to neighboring property owners, permit/lease holders, and other interested parties on October 10, 2018, for a 30-day public comment period.

Comment(s):

This decision is subject to both public and agency comments, and all comments received by the comment deadline will be considered in the FFD. Only those who comment and the applicant have the right to appeal the FFD.

**Written comments about this project must be received in this office no later than
5:00 PM on November 9, 2018 to be considered.**

To submit comments or project proposals, please choose one of the following methods:

Postal: Department of Natural Resources
Division of Mining, Land and Water
Southcentral Region Office
ATTN: John Cotenas
550 West 7th Avenue, Suite 900C
Anchorage, AK 99501-3577
Email: john.cotenas@alaska.gov
Fax: (907) 269-8913

Questions about the lease portion of this project can be directed to John Cotenas at (907) 269-8479.

If public comments result in significant changes to the Preliminary Decision, additional public notice will be given. To be eligible to appeal the Final Finding and Decision, a person must provide written comments during the Preliminary Decision comment period per AS 38.05.035(i)-(m).

Recommendation:

DMLW has completed a review of the information provided by the applicant, examined the relevant land management documents, and has found that this project is consistent with all applicable statutes and regulations. This decision considers the applicant's requested action, comments provided by local, state and federal agencies, the balance of private enterprise versus public recreation, and the enjoyment of state lands. SCRO considered three criteria to determine if this project provided the best interest to the State and the development and enjoyment of its natural resources. The criteria include direct economic benefit to the State, indirect economic benefit to the State, and encouragement of the development of the State's resources. The proposed lease provides a direct economic benefit to the State with the collection of the annual fee and any other associated fees. An indirect economic benefit is realized by the State through the encouragement and development of the State's resources. The authorization of this lease is in the State's best interest as it will continue to provide recreational opportunities to Alaskans. It is recommended that SCRO issue a 10-year lease to Johnson Investments.


John Cotenas, Natural Resource Specialist II

9 24 18
Date

Preliminary Decision:

It is the determination of the Division of Mining, Land and Water that it may be in the State's best interest to issue an AS 38.05.070(b) uplands lease for 10 years to Johnson Investments, as described above. Johnson Investments will be required to provide the \$2,000.00 EA cash bond, a \$9,500.00 performance guarantee bond, obtain permits required by the borough and DEC, and pay the \$2,160.00 annual fee prior to the issuance of the EA. As per AS 38.05.565(3), Johnson Investments will be required to maintain an accounting and remit payment for the amount of materials used per year. An approved appraisal provided at Johnson Investments cost will be required before lease issuance. Johnson Investments will be responsible for all waste removal, sanitary services, and all other maintenance activities of the site during the life of the lease. This application shall now proceed to public notice.


Clark Cox, Regional Manager
Southcentral Regional Office, Division of Mining, Land and Water

10-5-18
Date

Attachments

Attachment A – Development Plan
Attachment B – Location Map



Attachment A Development Plan

P. O. Box 241245
Anchorage, AK 99524-1245
(907) 561-2257
(907) 561-3135 FAX
1-800-770-2247 Toll Free
alaskaland@acg.net e-mail



Eugene H. Johnson's Development Plan
for
Lot 1, Kashwitna River Recreational Lots ASLS 2004-2
Section 36, Township 22 North, Range 4 West, Seward Meridian

Updated June 6, 2017

Enclosed is a plat design completed by a professional land surveyor for Eugene Johnson's proposed use of the property referenced above. Useable land will be limited when constructing setbacks on the section line easement and the required set back from the Kashwitna River. One-third of the land is feasible for development purposes and would allow for the creation of a drop-off site for float trips on the Kashwitna River.

The following is a list of items to be built and maintained on the site (corresponding to the enclosed drawings):

1. One water well (will be removed at end of lease)
2. One 20' x 30' open-air gazebo on posts (no foundation) with a small, enclosed fire pit (will be removed at end of lease)
3. One holding septic tank for an outhouse pumped annually (no plumbing or electricity required)
4. One 50' x 50' parking area for approximately six vehicles and raft trailers
5. Road access to the site is currently available

As mentioned in the narrative referenced above the site will be used as a drop-off location for floating the Kashwitna River. The area will accommodate approximately a dozen people per week with hand launch rafts in the Summer only. One trash receptacle will be on site and a fee of \$10.00 will be charged per family/group. Gravel available at this location which will assist with the parking pad, non-trailer launch area and enclosed fire pit which will be surrounded by the earthy material as a protective barrier.

In the previous correspondence it stated that electrical power was available via the adjoining property. My office has since learned that the site contains no public utilities. A small amount of brush clearing would be required to accommodate this proposal with the removal of

Attachment A Development Plan

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approximately a dozen trees, however all gravel would remain. All land will be returned to its original state at the end of the lease.

It is necessary to mention that a \$2,100.00 annually fee for vacant land use is excessive. Thank you, again, for your time and consideration of this land use lease proposal.

Eugene H. Johnson
Owner, Johnson Investments

Development Plan
Lot 1, Alaska State Land Survey, 22 North, 4 West, Section 36
Acreage: 12.45

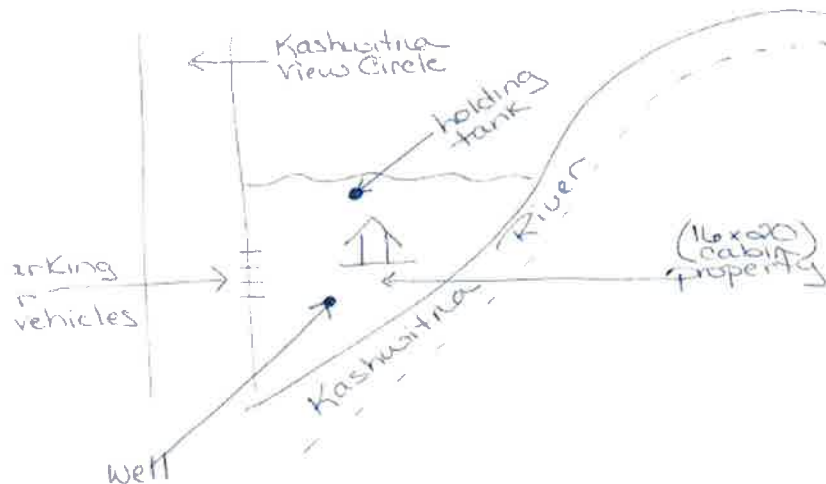
The following is the proposed development plan to correspond with lease application submitted June 11, 2014:

Road Name: Kashwitna View Circle

Terrain: Flat with wooded birch trees and brush

Lease Term Requested: 20 years

- Build a 16' x 20' wood frame or log cabin on piers for jumping off point for sightseeing/float trips down to Susitna River.
- Cabin heated by wood fireplace with lighting generated by propane.
- Small section of trees will be cleared for cabin and the parking of 3 vehicles.
- The structure shall be inspected on a weekly basis.
- A well will be drilled for water in steel casing with an attached hand pump.
- Will utilize a 1,000 gallon holding tank for restroom and pumped as needed.
- No trash will be generated.
- At the end of the lease term, all items shall be removed.



Attachment B Location Map

