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

Preliminary Decision
ADL 108078
Robert M. Meyer III
Application for Lease

Executive Summary
This document represents a preliminary decision to issue a 20-year, non-competitive lease to Robert Meyer III ("applicant") for residential buildings encroaching on state-owned land in Meyer's Chuck. The proposed area had previously been leased by a prior owner for commercial operations. In January 2011, the applicant applied for a replacement lease of a similar area, including a dock. Since there were no commercial operations taking place, it was determined that the dock did not require authorization. However, the residential buildings in place on state land would require a lease; the application was modified to include only those residential buildings. Due to low staffing and the presence of high priority cases in the Southeast Regional Land Office, the application was not adjudicated until now.

Requested Action
Robert M. Meyer III applied for a lease on January 13, 2011, to authorize residential buildings encroaching on state-owned land in Meyer's Chuck, Alaska.

The lease request is for continued use of a portion of existing residential buildings owned by the applicant. A development diagram is included as Attachment 1.

Existing Improvements:
- Residential buildings, wood-frame construction, approximately 1,300 sq. ft.;
- Approximately ten wooden pilings.

The total area requested by the applicant is approximately 0.40 acres. Final acreage and actual improvements placed on state land will be determined by an approved survey of the leasehold.

Proposed Action
The Division of Mining, Land & Water (DMLW) proposes to issue a 20-year lease to authorize residential buildings encroaching on state tidelands.

Scope of Decision
The scope of this decision limited to the determination of whether it is in the State's best interest to issue a 20-year lease to the applicant. The administrative review for this authorization is limited to (1) reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and regulations; (3) the facts pertaining to the land or resources; and (4) any issues that are material to the determination.

Authority
Alaska Statute (AS) 38.05.035-Powers and Duties of the Director, AS 38.05.070-Generally, AS 38.05.075-Leasing Procedures

Administrative Record
The administrative record for the proposed action consists of the Constitution of the State of Alaska, the Alaska Land Act as amended, applicable statutes and regulations referenced here-in, the *Central/Southern Southeast Area Plan* (CSSEAP, November 2000), and other classification references described herein, and the casefile for the application serialized by the DNR as ADL 108078.

Location Information

Geographic Location:
The proposed lease is located in the Meyer's Chuck locality within the City & Borough of Wrangell.

Legal Description:
Within Section 5, Township 71 South, Range 86 East, Copper River Meridian, that portion of tidelands known as Alaska Tideland Survey (ATS) 1122 according to the survey plat filed in the Ketchikan Recording District on January 20, 1988, as Plat No. 88-1, said parcel containing 0.40 acres, more or less.

Other Land Information:
Municipality: City & Borough of Wrangell
Regional Corporation: Sealaska Corporation
Village Corporation: n/a
Federally Recognized Tribe: Wrangell Cooperative Association
Approximate Coordinate Location: 55.7384° N, 132.2588° W (WGS84)

Title
The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying Clarence Strait in the section(s) referenced above, on the basis of the Equal Footing Doctrine, the Submerged Lands Act of 1953, and AS 38.04.062 (Identification of State Submerged Lands).

Title is subject to valid existing rights, including reservations, easements, and exceptions in the U.S. Patent or other State or federal conveyance, and in acts authorizing the issue thereof, easements, rights-of-way, covenants, conditions, reservations, notes on the plat, and restrictions of record, if any.

Adjacent Landowners
The applicant has stated that Donna Collins is the owner of Lot 7 of USS 2673, which is adjacent to the lease area. Donna Collins will be noticed of this preliminary decision. All other land adjacent to the proposed leasehold is owned by either the applicant or the State of Alaska.

Third Party Interests
City and Borough of Wrangell. The DNR will provide notice of this decision to third party interests.

Planning and Classification
The proposed site is subject to the *Central/Southern Southeast Area Plan* (CSSEAP, November 2000) and is located within Management Unit CT-04. The designation, classification, and management intent of Management Unit CT-04 are detailed below.

Designation:
Waterfront Development – "Use of tidelands, submerged lands, or shorelands for water-dependent or water-related facilities, usually for industrial or commercial purposes" (CSSEAP, p. 3-5).

Classification:
Waterfront Development Land – "Tideland, submerged land, or shoreland that is suitable to be used for commercial or industrial activities" 11 AAC 55.215.

Management Intent:
"Manage tract to retain access and support upland development" (CSSEAP, p. 3-299).

Chapter 2 of the CSSEAP also states that "State land within the planning will be managed to allow for multiple use." Although the proposed use of state land is not specifically prescribed in the management intent of Unit CT-04, this tract of state land is to be managed for multiple uses that do not preclude the primary use designated by the CSSEAP. Given the relatively small area that will be occupied by this proposed lease, and the amount of time that the improvements have been in place, it is evident that the proposed use has not or will not preclude the primary use. Therefore, the proposed use is found to be consistent with the planning and classification set out in the CSSEAP.

Access
The physical and legal access to the proposed lease site is via Lot 6, USS 2673, which is owned by the applicant, or via tide and submerged lands associated with Meyer's Chuck, a navigable body of water.

Access Along Public Waters
The site is located in Meyer's Chuck, AK. Pursuant to AS 38.05.126(a), the public has a constitutional right to free access to, and use of, navigable or public waters of the State of Alaska. Under 11 AAC 51.045 and AS 38.05.127, the DMLW is required to reserve specific public access easements to and along these waters. Unless comments and other information submitted to the DMLW provide justifiable and convincing evidence to do otherwise, this disposal of state interest will be subject to a 50-foot public access easement seaward and landward of the line of mean high water.

Public Trust Doctrine
Pursuant to AS 38.05.126, the proposed lease will be subject to the principles of the Public Trust Doctrine; specifically, the right of the public to use navigable waterways and the land beneath them for navigation, commerce, fishing, hunting, protection of areas for ecological studies, and other purposes. These rights must be protected to the maximum extent practicable while allowing for the development of this project. As such, the DMLW is reserving the right to grant other authorizations to the subject area consistent with the Public Trust Doctrine.

Reservation of Mineral Estate
In accordance with section 6(i) of the Alaska Statehood Act and AS 38.05.125, the state, in this decision, reserves unto itself the mineral estate, including oil and gas. The state also reserves the rights expressed in the reservation clause of the above statute, that being the right to reasonable access to the surface for purposes of exploring for, developing, and producing the reserved mineral resources. Any

exploration and development, which could occur, would be consistent with AS 38.05.130 and other applicable statutes and regulations.

Mineral Orders
The proposed leasehold does not fall within the areas delineated in Administrative Mineral Closing Order (MCO) No. [747] (CSSEAP, Appendix B). Neither an MCO nor a leasehold location order is necessary or appropriate for this proposed lease.

Hazardous Materials and Potential Contaminants
It is the management responsibility of the DMLW to protect the overall public interest if there is a reasonable expectation that a hazardous condition, or that hazardous, toxic, or radiological material or contamination from such material exists or is known to exist on the land being disposed of. No hazardous material or contamination from hazardous material is known to exist on the land proposed for lease, and the applicant does not propose to store hazardous materials over the proposed leasehold. Environmental risk associated with this proposed authorization should be minimal.

Agency Review
An agency review was conducted on August 23, 2018. The deadline for agency comments was September 24, 2018. The following agencies were included in the review: Alaska Department of Fish and Game (ADF&G), Alaska Department of Environmental Conservation (DEC), and Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation, Office of History and Archaeology.

> **Agency Review Comment and Response:**
> ADF&G, Access Defense Unit
> Comment: ADF&G has no fish and wildlife concerns provided that no fuel is stored on the floats and all lines, trash, and gear are stored in a way to minimize potential marine mammal entanglements.
>
> DNR Response: No response required.

Background
In 1979, the DMLW received an application from Robert M. Meyer I to lease a parcel of state tidelands (later surveyed as ATS 1122) to place a commercial dock to support a general store on the adjacent uplands. This lease was filed under ADL 100927 and was issued in May 1991.

In 2008, DMLW staff used the National Oceanic & Atmospheric Administration's (NOAA) Shorezone program to observe that the dock facility authorized under the lease (referenced above) was destroyed and/or removed. Additionally, staff discovered that the residential buildings on the associated uplands were encroaching onto state tidelands. At that time, no action was taken to resolve the encroachment. The lease (referenced above) expired in 2011.

Prior to the expiration of ADL 100927, Robert M. Meyer III, the new owner of the adjacent upland property, applied to authorize the same lease area for a private dock. This application was filed under ADL 108078 and is the subject of this decision. It was determined by the DMLW that, since the dock was to be used privately and not commercially, it constituted a "Generally Allowed Use" under 11 AAC 96.020. However, the residential buildings were still encroaching onto state tidelands. The lease application was updated to request authorization of the encroaching buildings.

Discussion
The residential buildings were in place prior to 1979, without conflict from the public. Since the dock that is proposed for construction constitutes a generally allowed use of state land, this authorization will only encompass the encroachment of these buildings. These buildings occupy a very small tract of land and are expected to be inconsequential to any potential use of land in the surrounding area. Given these considerations, the DMLW finds the proposed lease to be in the best interest of the state.

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

Development Plan
The development plan attached to this decision (Attachment 1), and dated January 13, 2011, is under consideration by the DMLW. Should the proposed lease be granted, it is anticipated that the development plan will need to be updated throughout the life of the lease as activities and/or infrastructure are added or removed. All updates must be approved, in writing, by the DMLW before any construction, deconstruction, replacement of infrastructure, or change in activity will be authorized. The DMLW reserves the right to require additional agency review and/or public notice for changes that are deemed by the DMLW to be beyond the scope of this decision.

Performance Guaranty
In accordance with AS 38.05.035, AS 38.05.860, and 11 AAC 96.060(a), the applicant will be required to submit performance guaranties for the lease to incentivize performance of the conditions of the lease. In order to provide a mechanism for the state to ensure that the lessee shares in financial burden in the event of noncompliance for site cleanup, restoration, and any associated costs after termination or expiration of the leases, a **$13,000** performance bond will be required.

The amount of this performance guaranty is based on the scope and nature of the activity and the potential cost of restoring the site. Performance guaranties are subject to periodic adjustments during the term of the authorization. These adjustments allow us to address any potential changes in the costs of rectifying problems and rehabilitating state land due to inflation, changes in the level or nature of development, or other appropriate factors.

Insurance
Since this authorization is for a residential use, the DMLW is not requiring insurance for the proposed lease.

Per AS 38.04.045 and AS 38.05.070, an official cadastral survey is required for long-term leases. An official cadastral survey was accomplished to delineate this parcel for the previous lease, ADL 100927, and was filed as ATS 1122. The DMLW will continue to use this survey to delineate this leasehold.

Appraisal
As provided by AS 38.05.840(b), the applicant is not required to provide a fair market value appraisal to determine the initial lease compensation. Based on a Minimum Rent Determination Appraisal from the DMLW Appraisals Unit, the compensation will be the minimum required by 11 AAC 58.410.

Compensation

Annual Land Use Fees:
Pursuant to 11 AAC 58.410(b), AS 38.05.075(f) and AS 38.05.840(b), the annual land use fee will be $500.

Periodic Rate Adjustment:
In accordance with AS 38.05.105, the annual land use fee payment will be subject to adjustment at five-year intervals after the issuance of the lease.

Payment for Land Use without Authorization:
The encroaching buildings have been in place without authorization since the expiration of the previous lease. If the proposed lease is issued, the annual land use fee of $4,000 will be charged for the duration of unauthorized activity and payment of these fees will be due as a deliverable for issuance of the entry authorization.

Subleases
Subleasing may be permissible through AS 38.05.095, if the proposed lease is approved. All potential subleases must first be approved in writing by the DMLW. The DMLW may conduct further agency review and/or public notice before deciding on the appropriateness of the proposed sublease. The sublease fee will not be less than 25% of the annual fee paid to the lessee by the sublessee.

Reclamation
In accordance with AS 38.05.090, the leasehold must be restored to a "good and marketable condition" as determined by the DMLW within 120 days after termination of the proposed lease.

Public Notice
Pursuant to AS 38.05.945, this preliminary decision will be advertised for a 30-day public comment period. In addition, the post offices located near the proposed leasehold will be requested to post the notice pursuant to AS 38.05.945(b)(3)(C). The notice will also be posted on the State of Alaska Online Public Notice website pursuant to AS 38.05.945(b)(3)(B) located at: https://aws.state.ak.us/OnlinePublicNotices. In accordance with AS 38.05.946, a municipality or a corporation entitled to receive notice under AS 38.05.945(c) may hold a hearing within 30 days after the receipt of the notice.

The public is invited to comment on this preliminary decision. All comments received during the public comment period will be considered in the final decision. If public comments result in significant changes to the preliminary decision, additional public notice may be given. A copy of the final decision, along with instructions on filing an appeal, will be sent to all persons who comment on the preliminary decision. To be eligible to appeal, a person affected by the final decision must provide written comments during the public comment period per AS 38.05.035(i).

Written comments about this project must be received in this office no later than 5:00 PM on 11-4-2019 to be considered.

To submit comments please choose one of the following methods:

Mail: Department of Natural Resources
Division of Mining, Land and Water
Southeast Region Office
ATTN: Jacob Hall
PO Box 111020
400 Willoughby Ave, Suite 400
Juneau, AK 99811-1020
Email: jacob.hall@alaska.gov
Fax: (907)500-9011

Questions about the lease portion of this project can be directed to Jacob Hall at (907) 465-3402.

Signature page follows:

Adjudicator Recommendation
Based on the information provided by the applicant and other agencies, as well as review of planning documents, statutes, and regulations, I recommend approving a 20-year lease to the applicant authorizing the residential buildings encroaching on state land. I recommend proceeding to public notice for the purpose of providing the members of the public and those entities identified in AS 38.05.945 an opportunity to review and submit comments.

Jacob T. Hall — 10/4/19
Jacob Hall, Natural Resource Specialist II — Date

Unit Manager Concurrence

Ryan Wilson, Natural Resource Manager — 10/4/19
Date

Preliminary Decision
It is the determination of the Division of Mining, Land & Water that it may be in the State's best interest to issue a 20-year lease to the applicant, as described above. This preliminary decision shall now proceed to public notice.

Lee V. Cole Jr. — 10/4/2019
Lee V. Cole, Jr., Southeast Regional Manager — Date

ATTACHMENTS:

Attachment 1. Development Plan
Attachment 2. Draft Standard Lease Agreement and Special Stipulations