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

SPECIAL EXCEPTION

to the
Central Southern Southeast Area Plan
related to the
Elma Barbara May Tideland Lease – ADL 109354

Name: Chapter 2, Shorelines, Stream Corridors and Coastal Areas section, Management Guideline H.

Location: Lease area described in the Preliminary Decision for the Elma Barbara May Tideland Lease, ADL 109354. The lease area is generally the tidelands adjacent to Lot A, Nichols View subdivision of U.S. Survey 1769, all within plan management unit KT-61. See the Preliminary Decision for the Elma Barbara May Tideland Lease, ADL 109354, for a detailed property description and a depiction of the special exception/lease location.

Authority: The authority to revise plans derives from *AS 38.04.065(b) Land Use Planning and Classification*; *11 AAC 55.030(f) Land Use Plan* defines when a revision constitutes a special exception. The authority to approve special exceptions has been delegated from the Director of the Division of Mining, Land, and Water (DMLW) to Section Managers and Regional Managers by Department Order 03.

Current Plan: Currently, the Central Southern Southeast Area Plan (CSSEAP)¹ Management Guideline H (pg. 48) of the Shorelines, Stream Corridors and Coastal Areas section of Chapter 2 reads, “Filling state tidelands and submerged lands for residential purposes will not be allowed”.

The lease area is within management unit KT-61. The management intent for this unit states:

“This parcel, situated south of the City of Ketchikan, contains a diversity of uses, some of which are quite intense. Portions of the parcel are designated Sd (Shoreline Development) and Ru (Recreation, Undeveloped). The areas of the Ru designation coincide with areas of PLI zoning. These areas adjoin the South Tongass Highway and have good views of Annette and other islands. Areas designated Ru are to be managed to insure the continuation of this viewshed. Only authorizations compatible with this intent are appropriate”.

¹ Adopted in 2000.

Proposed Special Exception: This special exception to the CSSEAP exempts the area described above from Chapter 2's prohibition of tideland fill for residential purposes, and thus allows DNR-DMLW to lease the tidelands to the upland landowner for this purpose.

Background: The subject lands are tidelands adjacent to Lot A, Nichols View subdivision of U.S. Survey 1769, part of a 1979 Plat filed under document number 1964-000898-0 on May 15, 1964 in the Ketchikan Recording Office. The 1976 Plat is a re-subdivision of Nichols View Subdivision of U.S. Survey 1769 according to the plat. The 1964 Plat and the 1976 Plat both refer to U.S. Survey No. 1769, which describes the seaward boundary of the land as "following the meander line along the line of ordinary high tide of Tongass Narrows ... ". The 1964 Plat delineates an area seaward of the platted lots to the tideline as "Tidelands Suitable For Lease." The delineated area contains the tidelands adjacent to and seaward of Elma Barbara May's property.

In the early 1980s, Herbert Chambers (husband of Elma Barbara May and owner of Lot A, USS 1769), obtained the necessary permits from the US Army Corps of Engineers and a setback variance from the Ketchikan Gateway Borough Planning Commission to build their home on the property in question. The U.S. Army Corp of Engineers granted Herbert Chambers a permit to place 1,500 cubic yards of fill on state-owned tidelands for construction of private residence.

Explanation: In the 1970s and 1980s, the landowners placed fill on the state-owned tidelands believing they had obtained all the necessary authorizations for the fill and construction of their home. The subject lands contain improvements that were built at least 20 years before the adoption of the CSSEAP on tidelands that the 1964 plat stated would be "Suitable for Lease." A special exception is required to exempt the lease area without changing the management guideline application for the entirety of the plan boundary or unit KT-61.

Applying 11 AAC 55.030(f)(1)(B), it would be excessively burdensome, impractical and inequitable to the landowners to reject this special exception, which would have the inequitable effect of requiring the removal of the tideland fill supporting their residential improvements. The 1964 plat states the "Tidelands [in front of the Lot A are] Suitable for Lease." This constitutes a unique fact that supports approving this one-time, limited purpose variance of the plan's provisions.

Assessment: The proposed action affects only the area described in the location section and does not change the overall management intent or management guidelines for the planning area. This constitutes a one-time, limited-purpose variance of the plan's provisions. This action is also consistent with the management intent for the Ru designated land in unit KT-61, which is to maintain the viewshed. To authorize the continued use of these tidelands, there is no other alternative other than to process this special exception.

Requirements of AS 38.04.065(b): The factors identified in AS 38.04.065(b) have been considered in the Preliminary Decision for ADL 109354 issued on May 15, 2024 and the proposed action is consistent with statute.

Decision: The standards for a special exception have been reviewed and have been met. The Resource Assessment and Development Section of the Division of Mining, Land, and Water, Department of Natural Resources finds that the special exception to the CSSEAP, as described above, meets the criteria for special exceptions under 11 AAC 55.030(f) and is hereby approved.

Approved: Monica Alvarez May 15, 2024
Monica Alvarez, Section Manager Date
Resource Assessment and Development Section
Division of Mining, Land, and Water
Department of Natural Resources