

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

Northern Regional Land Office

**Preliminary Decision
ADL 422229**

United States Army Corp of Engineers (USACE)

Application for Lease

AS 38.05.810(a)

This Preliminary Decision (PD) is the State's preliminary best interest finding regarding a proposed disposal of interest in state land. The public is invited to comment on this PD. The deadline for commenting is **5:00 pm July 29, 2024**. Please see the Public Notice section of this decision for requirements related to submitting comments for consideration.

Requested Action

USACE (applicant) applied to the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW) to lease approximately 67 acres to install research equipment for monitoring permafrost changes and drainage diversion structures. The site is located within the Fairbanks Meridian, Township 001 North, Range 001 East, Section 6. The applicant requested a 55-year public and charitable lease. A map showing the proposed location is included as Attachment A.

Proposed Action

DMLW proposes to issue a 25-year public and charitable lease to the applicant for the installation of non-permanent research equipment to monitor drainage diversion structures and permafrost changes for erosion control.

Proposed Related Action

Mineral Order (MO) 1288 will be developed separately to close the requested lease and the adjacent areas in sections 5 and 6 to new mineral entry. The MO proposal is described in more detail in the "Mineral Orders" section of the decision.

Public notice for the related action is being conducted concurrently.

Scope of Decision

The scope of this decision is to determine if it is in the State's best interest to issue a 25-year public and charitable lease to the applicant. The administrative review for this authorization is defined by AS 38.05.035(e)(1)-(2) and 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

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 38.05.075, AS 38.05.810 Generally, and AS 38.05.945 Notice.

The authority to execute the PD, Final Finding and Decision (FFD), Entry Authorization (EA), and the lease has been delegated to the Regional Managers of DMLW.

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 herein, the 2015 Eastern Tanana Area Plan and other classification references described herein, and the casefile for the application serialized by DNR as ADL 422229.

Location Information

Geographic Location

On state lands adjacent to the USACE Permafrost Tunnel, situated 16 miles north of Fairbanks in Fox near the valley floor of Goldstream Creek.

Legal Description

Government Lots 1 and 8, Section 6, Township 001 North, 001 East, Fairbanks Meridian, consisting of approximately 67 acres.

Other Land Information

Fairbanks North Star Borough, though no borough lands are involved.

Regional Corporation: Doyon Limited, though no corporation lands are involved.

Title

The State received patent to these lands under GS-509: Patent 1233072, dated August 20, 1963. This patent is subject to a reservation for ditches, canals, railroads, telegraph and telephone lines, and water rights, as well as a right-of-way for a material site, and a right-of way for a pipeline and telephone line for federal use (F-026677). This patent is for a number of parcels, and all reservations may not impact all lands. A DNR Title Report was requested on April 8, 2024, which will determine which reservations impact the proposed leasehold.

Adjacent Landowners

The proposed lease area is surrounded by state land. The Mental Health Trust Authority (MHTA) holds title to the adjacent lands. USACE has also applied for a land conveyance on the MHTA lands in support of their research and Permafrost Tunnel facility management efforts.

Third Party Interests

- ADL 421870, Special Land Use Permit issued to Northern Arizona University.
- LAS 33711, Land Use Permit issued to UA Land Management.

These third parties will have an opportunity to comment on the proposed lease. There are no other known third-party interests identified at this site. A title report has been requested and, if available, will be incorporated into the FFD.

Planning and Classification

ADL 422229 is located within lands classified as unit F-46 within the Eastern Tanana Area Plan (ETAP). Lands in the F-46 unit are designated "Settlement" per ETAP (ETAP 3-43). ETAP defines the management intent of Settlement lands as, "To provide opportunities for private ownership and leasing of land currently owned by the state" (ETAP 2-2).

Additionally, Leasehold Location Order 39 (LLO) protects lands that are designated as Settlement in ETAP; the lease area is within the intended management unit for LLO 39 and serves to further protect Settlement lands from mining activity by requiring miners to obtain a mining lease rather than staking a mining claim in the area (ETAP Appendix C-1).

DMLW has determined that the proposed lease is consistent with the classification, designation, and management intent of ETAP.

Traditional Use Finding

The proposed site is located within the Fairbanks North Star Borough. Pursuant to AS 38.05.830 a traditional use finding is not required.

Access

Current physical access is through the existing Permafrost Tunnel Facility, owned and managed by the applicant. Legal access to these parcels is via section line easements south to platted roads within the Gold Country Estates subdivision, Plat 85-104, Fairbanks Recording District.

Access Along Navigable and Public Waters

There are no public or navigable waters within the proposed lease.

Public Trust Doctrine

Pursuant to AS 38.05.126, all authorizations for this site 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, 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, and the rights expressed in the reservation clause of the statute, that being the right to reasonable access to the surface for purposes of exploring for, developing, and producing the reserved mineral resources. Exploration and development, if any, which could occur, would be consistent with AS 38.05.130 and other applicable statutes and regulations.

Mineral Orders

All lands within the proposed leasehold are closed to mineral entry pursuant to Mineral Closing Order 12. MCO 12 was signed on July 16, 1968, to preclude conflicts with the Permafrost Project. Since 1968, drainage patterns have changed, and these changes appear to be accelerating. USACE has requested the expansion of this MCO to limit significant surface disturbance often associated with subsurface estate development. This would allow USACE to successfully model the drainage patterns and develop appropriate mitigation measures to preserve the permafrost tunnel research area. The MCO expansion is larger than the requested lease area; the MCO expansion is intended to encompass the drainage, while the lease is the area in which they anticipate needing more site control and to be able to take active measures to protect the facility. We propose to open Government Lot 5 in Section 7 to mineral entry, as we do not anticipate development in this area would have significant impacts on drainage patterns affecting the Permafrost Tunnel project.

The current Legal Description for MCO 12 is imprecise, relying on “unappropriated lands within” specific aliquot parts, even where Government Lots pursuant to the US Rectangular Survey are present. The stated acreage of the current order, 324 acres, is based on the total acreage within the aliquot parts, regardless of ownership; in fact, the MCO is only valid where the subsurface estate is held and managed by DMLW. The amended MCO will incorporate a more precise legal description that only encompasses DMLW managed subsurface estate. Additionally, DMLW implemented a new file naming convention whereby new mineral estate closures and openings are assigned a Mineral Order (MO) number, rather than a Mineral Closing Order (MCO) and a separate Mineral Opening Order (MOO).

The amended mineral order is serialized as MO 1288, encompassing a total of 425 acres. This action is being adjudicated concurrently with the lease application.

MCO 1288 Legal Description: The NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 5 within Township 001 North, Range 001 East, Fairbanks Meridian, Alaska, according to the survey plat approved by the United States Department of the Interior, General Land Office on January 16, 1914, containing 120 acres, more or less.

AND

Government Lots 1, 8, 9, 10, and 11, the SE $\frac{1}{4}$ NE $\frac{1}{4}$, the N $\frac{1}{2}$ SE $\frac{1}{4}$, and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6 within Township 001 North, Range 001 East, Fairbanks Meridian, Alaska, according to the survey plat approved by the United States Department of Interior, General Land Office on January 16, 1914 and the supplemental survey plat accepted by the United States Department of the Interior, Bureau of Land Management on August 5, 1970, containing 305 acres, more or less.

Altogether containing 425 acres, more or less.

Hazardous Materials and Potential Contaminants

No hazardous materials will be stored in the lease area.

Agency Review

An agency review was conducted on April 1, 2024. The deadline for agency comments was April 22, 2024.

The following agencies were included in the review:

DNR Office of History and Archaeology/SHPO

DNR Division of Forestry

Department of Fish and Game (DFG) – Access Defense

Fairbanks Soil and Water Conservation District

Agency Review Comment and Response

Information from other Sections within DMLW has been considered and incorporated into this Preliminary Decision.

DFG: DFG had no objections to the proposed lease

DMLW Response: Thanked for their comment.

Background

Historic mining in Fox modified the profiles of Glenn and Swindle Creeks by destabilizing the creek channels, which have created steep, unstable reaches near the Permafrost Tunnel. Glacial silts and gravel in the area are unable to support stable channels, therefore causing head-cutting, down-cutting, and lateral migration of stream channels that may threaten the Permafrost Tunnel facility.

The applicant has managed the Permafrost Tunnel since its excavation in 1963 for the study of permafrost, geology, ice science, and mining and construction techniques that are specific to permafrost environments. In 2011, USACE began the expansion of the tunnel (known as the south tunnel), which now connects to the north tunnel, to support research projects by exposing new ice features, bones, vegetation, and soils.

The application refers to Property Account Numbers (PANs), these are property identifiers made by the Fairbanks North Star Borough. PANs 0660494 and 0690355 are within Government Lots 1 and 8 of Section 6, respectively. For the purposes of this decision, these areas will be described by Government Lot rather than the borough PANs.

Discussion

On March 22, 2024, DMLW received a complete lease application from USACE for a 55-year lease to conduct research on the lands adjacent to the Permafrost Tunnel under AS 38.05.810(a), with a future desire to apply for a land conveyance. This office is proposing to issue a 25 year lease. Statutorily, lessees have the opportunity for a one-time renewal term that cannot exceed the length of the original lease term. In this case, a renewal could not exceed 25 years. The total potential term of 50 years will allow DMLW to evaluate whether this use remains the highest and best use in 50 years rather than 110 years. The proposed lease area will house temporary equipment to support USACE's research aims. Types of research equipment include temperature thermistors that will be in place for 5-6 years, pressure transducers in Glenn Creek, and ten-meter-deep boreholes.

USACE aims to install Nature Based Structures (NBS) to restore the nearby eroding gullies. Examples of NBS that may be utilized for drainage diversion are coir fiber logs, saw dust, and tree branches. These types of solutions were discussed with the United States Army Garrison, USACE, and DMLW during a pre-applicational Engineering with Nature Workshop. Participants of the workshop discussed the incorporation of existing materials on the proposed lease area. Impacts of cutting branches on standing trees in the lease area such as reduced shading for the underlain permafrost was mentioned, leading USACE to shift their methods for branch collection to be from already fallen trees.

This research is believed to be in the state's best interest as it will help protect the Permafrost Tunnel. The Permafrost Tunnel supports the University of Alaska's (UA) research efforts to better understand changes to permafrost and its impacts on surrounding communities and infrastructure, attracting scientists from around the world to conduct permafrost-related research. Additionally, by better understanding and diverting the drainage, it may reduce potential impacts to the neighboring subdivision.

The proposed lease will be subject to the terms of DMLW's lease document effective at the time the lease is signed. The current standard lease document is available for review upon request. The lease will also be subject to additional stipulations based, in part, upon the following considerations.

Development Plan

The Development Plan (DP) attached to this decision (Attachment B) and dated March 20, 2024, is under consideration by DMLW. 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 DMLW before any construction, deconstruction, replacement of infrastructure, or change in activity will be authorized. DMLW reserves the right to require additional agency review and/or public notice for changes that are deemed by DMLW to be beyond the scope of this decision.

Performance Guaranty

The applicant is a federal agency; therefore, the performance guaranty requirement is waived for the purpose of the proposed lease.

Insurance

In consideration of the low risk associated with the proposed activities and the fact that the applicant is self-insured, no commercial insurance will be required.

Survey

In accordance with AS 38.04.045, the applicant must complete an approved survey according to the requirements and standards of DMLW's Survey Section prior to lease issuance. If the submitted survey is accepted by DMLW, the measurements identified will be used to accurately calculate the total acreage. The survey must be performed by an Alaskan registered Land Surveyor under survey instructions issued by the DMLW Land Survey Section. The applicant is responsible for the cost of the survey. The applicant shall submit an initial draft of the survey at least one year prior to the

expiration of the EA. Within 10 business days of the execution of the EA, the applicant shall contact the DNR survey section at (907) 269-8523 to obtain a request for survey instructions form.

Compensation and Appraisal

The proposed use will support USACE's efforts in diverting the drainage that threatens the security of the permafrost tunnel. The Permafrost Tunnel supports the University of Alaska's (UA) research efforts to better understand changes to permafrost and its impacts on surrounding communities and infrastructure.

The function rendered by the applicant will help protect this valuable resource to the state, as a result, fees will be waived in full. In accordance with AS 38.05.840(b), the applicant will not be required to provide an appraisal before lease issuance, and the proposed annual fee requirement will be waived.

Entry Authorization (EA)

DMLW proposes to authorize the applicant's entry onto state land through the issuance of an EA while they are completing the required development, survey and/or appraisal. The term of the EA will be for a term of three years. The proposed EA would be issued after the FFD goes into effect. The term of the Entry Authorization is included in the term of the lease.

There will not be an annual fee for the proposed EA since the applicant is a federal entity and the proposed use is in the best interest of the state.

Subleases

Subleasing is permissible through AS 38.05.095, if the proposed lease is approved. As this lease is authorized under AS 38.05.810(a) for public and charitable use, the lessee may only sublease to another qualified entity under AS 38.05.810(a). All potential subleases must first be approved in writing by DMLW. DMLW may conduct further agency review and/or public notice before making a determination on the appropriateness of the proposed sublease. The sublease fee will not be less than 25 percent of the annual fee paid to the lessee by the sublessee.

Assignment

The proposed lease, if issued, may be assigned to another entity qualified under AS 38.05.810(a) 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, the leasehold must be restored to a "good and marketable condition" within 120 days after termination of the lease.

Public Notice

Pursuant to AS 38.05.945, this PD will be advertised for a 30-day public comment period, starting on June 28, 2024. In addition, the Steese Branch post office 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/Default.aspx>

In accordance with AS 38.05.946, the Fairbanks North Star Borough is a municipality entitled to receive notice under AS 38.05.945(c) and may hold a hearing within 30 days after the receipt of the notice.

The public is invited to comment on this PD. All comments received during the public comment period will be considered in the FFD. A copy of the FFD, along with instructions on filing an appeal, will be sent to all persons who comment on the PD. If public comments result in significant changes to the PD, additional public notice may be given.

To be eligible to appeal, a person affected by the FFD 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 July 29, 2024, to be considered.

To submit comments please choose one of the following methods:

Mail: Department of Natural Resources
Division of Mining, Land and Water
Northern Regional Land Office
ATTN: Haley Evans
3700 Airport Way
Fairbanks, AK 99709

Email: haley.evans@alaska.gov

DNR-DMLW complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services or special modifications to comment should contact Alaska Relay at 711 or 800-770-8973 for TTY services.

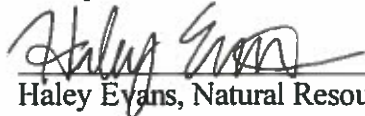
Questions about the lease portion of this project can be directed to Haley Evans at (907) 451-2806.

Signature page follows.

Recommendation

DMLW has completed a review of the information provided by the applicant, examined the relevant land management documents, agency comments, and land ownership, and has found that this project is consistent with all applicable statutes and regulations. DMLW considered both direct and indirect benefits to the State. As there are no competing projects which are incompatible with the proposed lease and in consideration of the benefits described above, DNR finds granting of the proposed lease provides the greatest benefit to the State.

I find the proposed action may be in the State’s best interest and recommend approval to proceed with public notice.



Haley Evans, Natural Resource Specialist 3

6/28/24

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 a P&C lease for 25 years to the applicant, as described above. Additionally, the issuance of this lease will support USACE’s efforts in diverting the drainage that threatens the security of the permafrost tunnel which is in the State’s best interest. This application shall now proceed to public notice.



AJ Wait, Natural Resource Manager 2

Northern Regional Land Office, Division of Mining, Land and Water

6/28/24

Date

Attachments

- Attachment A – Development Plan
- Attachment B – Draft Lease Agreement
- Attachment C – Draft Mineral Order Administrative Finding
- Attachment D – Draft Mineral Order