

ATTACHMENT B

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
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AMENDMENT # 2 TO INTERAGENCY LAND MANAGEMENT ASSIGNMENT ADL 105452

**State of Alaska – Department of Transportation and Public Facilities
Alaska Marine Highway System Ferry Terminal
Angoon, Alaska – Killisnoo Harbor**

Interagency Land Management Assignment, ADL 105452, issued to the State of Alaska, Department of Transportation and Public Facilities (DOTPF), on September 2, 1992, and as subsequently amended on June 25, 2015, is hereby amended to add the following parcel of land:

Parcel 1 Unsurveyed land within Section 7, Township 51 South, Range 68 East, Copper River Meridian, more particularly described as coincident with a portion of the east boundary of Tract B, Alaska Tideland Survey (ATS) 1026; and coincident with the southeast boundary of Tract A, ATS 1026, and extending approximately 100 feet southeasterly of said boundary of Tract A, ATS 1026; filed as Plat 92-17, Document No. 1992-001823-0, Juneau Recording District, containing approximately 0.4 acres, more or less.

With this amendment, the total acreage authorized by this ILMA is approximately 5.52 acres, more or less (See Attachment A).

This amendment is subject to addition of the following terms and conditions to the ILMA:

- 1) **Location of Improvements.** Pursuant to AS 38.95.160, a professional architect, engineer, or surveyor shall supervise the location and design of any improvements on the tract, and shall be responsible for preparing a survey plat for recording in the appropriate recording district if the costs are more than \$100,000. Each registered professional shall be responsible for that part of the project to which his or her license pertains.
- 2) **Public Trust Doctrine and Public Access.** This authorization for the use of tide and submerged land is issued subject to the Public Trust Doctrine which guarantees public access to and the public's right to use, all navigable and public waters and the land beneath them for navigation, commerce, fishing and other purposes.

Public access and use of the facility shall be provided for and regulated in accordance with DOTPF statutory and regulatory authorities.

The public's ability to access and use navigable waters located beyond the boundaries of this ILMA shall not be impaired.

- 3) **Third-Party Interests and Transfer of Rights.** The right to grant or permit the creation of third-party interests for utilities, roads, pipelines or other public works that are extensions of improvements from adjoining lands and do not interfere with the approved use of the tract is subject to the written approval of the Division of Mining, Land and Water (DMLW). The assignment, grant or any other creation of third-party interest for any uses other than those specified in Attachment A is not permitted unless such uses are specifically authorized in writing by DMLW. The subject property will not be subdivided, sold, exchanged or otherwise transferred.
- 4) **Liens and Assessments.** DOTPF is responsible for paying all liens, assessments or other encumbrances against the property.
- 5) **Alaska Historic Preservation Act.** DOTPF shall consult with the Alaska Heritage Resources Survey (AHRs), (907) 269-8721, to ensure that known historic, archaeological or paleontological sites are avoided. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any historic, prehistoric (paleontological) or archaeological site without a permit from the DNR Commissioner. If any such site is discovered during the course of the permitted activity, DOTPF shall cease any activity that may damage the site and immediately notify the Department of Natural Resources (DNR), Division of Parks and Outdoor Recreation (DPOR), Office of History and Archaeology (OHA), at (907) 269-8721.
- 6) **Fuel and Hazardous Substances.** To ensure future use of public lands as well as tide and submerged lands, fuel and hazardous substance use shall occur in a manner that avoids toxic discharge and run-off. Fuel and hazardous substance containers must be placed in impermeable containment capable of containing 110% of the volume of the largest fuel container. Assignee is responsible for preventing spillage and contamination of contiguous land and water as well as cleaning up any oil or other pollutants that result from activities associated with this permit. Appropriate spill response equipment must be on hand to respond to spills from any transfer or handling of fuel or other hazardous substances. All independent fuel and hazardous substance containers shall be marked with the contents and DOTPF's name using paint or a permanent label.
 - a) Container marking. All independent fuel and hazardous substance containers shall be marked with the contents and the owner'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.
 - c) Definitions.
 - i) "*Containers*" means any item which is used to hold fuel or hazardous substances, including 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. Manifolded tanks or any tanks in a series must be considered as a single independent container. Vehicles are not intended to be included under this definition.

- ii) “*Hazardous substances*” are defined under AS 46.03.826(5)(a) as 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).
- iii) “*Surface liner*” means any safe, non-permeable container (e.g., drip 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.

- 7) **Spill Notification.** DOTPF shall immediately notify the Department of Environmental Conservation (DEC) by telephone, and immediately afterwards send DEC a written notice by facsimile, hand delivery, or first-class mail, informing DEC of any unauthorized discharges of oil to water; any discharge of hazardous substances other than oil; and any discharge or cumulative discharge of oil greater than 55 gallons solely to land and outside an impermeable containment area. If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, DOTPF shall report the discharge within 48 hours, and immediately afterwards send DEC a written notice by facsimile, hand delivery, or first-class mail. Any discharge of oil, including a cumulative discharge, solely to land greater than one gallon up to 10 gallons must be reported in writing on a monthly basis. The posting of information requirements of 18 AAC 75.305 shall be met. Scope and Duration of Initial Response Actions (18 AAC 75.310) and reporting requirements of 18 AAC 75, Article 3 also apply.

DOTPF shall supply DEC with all follow-up incident reports. Notification of a discharge must be made to the nearest DEC Area Response Team during working hours: Anchorage (907) 269-3063, fax (907) 269-7648; Fairbanks (907) 451-2121, fax (907) 451-2362; Juneau (907) 465-5340, fax (907) 465-2237. The DEC oil spill report number outside normal business hours is (800) 478-9300.

- 8) **Term and Review.** This ILMA is valid for so long as required for said public purposes. This ILMA is subject to cancellation if a review shows that there is either (1) abandonment of the site; (2) significant non-use relative to the approved development plan; (3) a violation of the terms and conditions of the ILMA; or (4) a new use not authorized in the approved development plan.

Pursuant to AS 38.04.060(b), this ILMA is subject to review by DMLW every 5 years to analyze current or proposed uses as these uses relate to alternative uses for all or part of the land and to determine the uses which best provide for the public interest. This review will not conflict with DOTPF responsibilities as the facility operator.

Any reduction in the right-of-way of a federal aid facility requires DOTPF to follow a certain process to avoid placing the State at risk of reimbursing the federal government the funds used in making the improvements. In the event DMLW and DOTPF mutually determine that a reduction of the right-of-way is appropriate, DOTPF will follow its process to make this change occur.

- 9) **Excess Lands.** As required by AS 38.05.030, any land assigned by DMLW to DOTPF under this ILMA shall be returned to the management of DMLW when it is no longer needed for the purposes assigned. Lands that are in excess of DOTPF's needs shall be returned to the management jurisdiction of DMLW upon a finding that the site has been rehabilitated to the satisfaction of the DMLW Director.
- 10) **Returned Land.** Land returned to DMLW for any reason shall be restored to an environmental and physical condition acceptable to the DMLW Director within three (3) years, subject to funding restrictions, from the date this ILMA is abandoned, relinquished, or terminated. This may include rehabilitation of the site and/or removal of any improvements, equipment, and material.
- 11) **Inspections.** The land under this ILMA is subject to inspection by DMLW during the term of this ILMA in order to determine compliance with the ILMA stipulations and conformance with the development plan.

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