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# **3 LEASES AND AN EASEMENT: STATE OF ALASKA LEASES & USE RIGHTS**

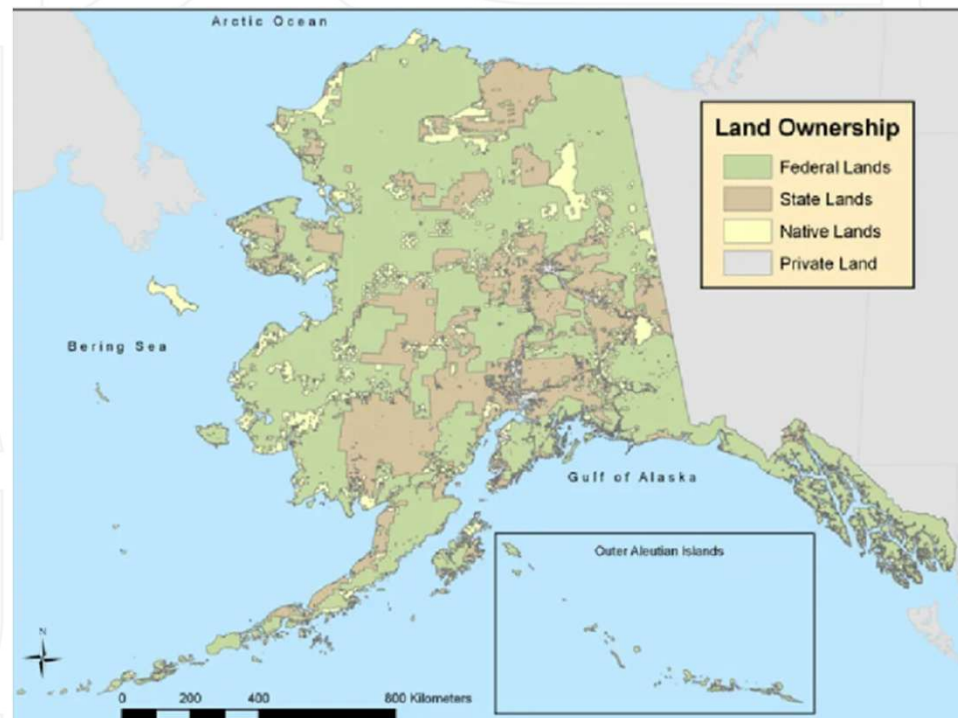
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**Presentation to the Real Estate Section of the Alaska Bar | May  
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**Ben Spiess & Jed Ullrich**

# Lease & Use of State Lands

- **Alaska is big ... 365 million acres**
  - Federal ~ 65% ~ 220 million acres
  - State ~ 25% ~ 104.5 million acres
  - Alaska Native Corporations ~ 10% ~ 44-45 million acres
  - Private ~ <1%



# State Lands Dispositions

- **The Alaska Land Act (AS 38.05)** governs how the State manages, classifies, develops and disposes of its lands . . . With certain exceptions.
- **AS 02.15** – the Alaska Aeronautics Act of 1949 - governs airports, including the authority of DOT to operate, manage, and grant leases for state-owned airports.



# *This presentation is about State Leases and Use Rights:*

## ***3 Leases and an Easement:***

- State Land Leases*
- DOT&PF Airport Leases*
- Tidelands Leases*
- Tidelands Easements*



# We are not talking about . . . Everything else

## Other Species of State Land Dispositions

- *Sale of Land* (AS 38.05.005 - .040)
- *Timber Rights* (AS 38.05.110-.123)
- *Oil & Gas Leases* (AS 38.05.150)
- *Mining Rights* (AS 38.05.205)
- *Parks and Recreation Areas* (See Title 41, Chapter 21 and Title 38, Chapter 5)
- *Material Sales* (gravel, etc.) (AS 38.05.550 – 38.05-565)
- *Remote Cabin Sites* (AS 38.05.600)
- *Agriculture* (AS 38.05.069, .070, .321)
- *Mariculture* (AS 38.05.083)



# Land & Tidelands Leases

## Land Leases & Tidelands Lease – AS 38.05.070

- **Term:**

- If less Than \$10,000 . . . DNR may negotiate a lease of up to 10 years
- If more than \$10,000 . . . Lease may be up to 55 years.
- Term is based in part on the useful life of improvements

- **Renewal Rights.** A lease may be renewed upon application by lessee if the lease is in good standing for a term not longer than the initial term of the lease. (110 years)
- **Use:** Almost any commercial, industrial, or agricultural use. Cell towers, data centers, remote lodges, remote communication facilities. Note – land is generally not leased for residential use but sold instead.
- **Scope of Rights:** The scope of rights is generally tailored to Lessee’s use. Generally, the leased area is no more than the amount reasonably necessary for the use.
- **Improvements:** Improvement (buildings, installations, fixtures) are owned by the Lessee. Generally must be removed within 60 days. If not removed, the State may remove and assess costs on the lessee.
- **Assignment & Transfer:** Generally assignable with the written consent of DNR . . . But consents are not automatic and they can be time consuming.



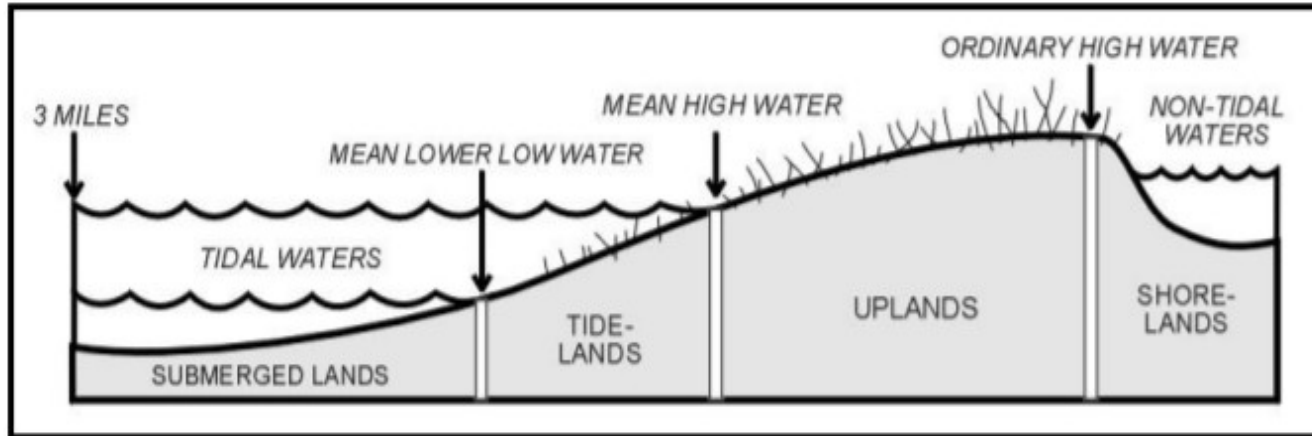
# Land & Tidelands Leases Cont.

## *Land Leases & Tidelands Lease – cont.*

- **Procedure.**
  - Lease Application
  - Development Plan (describing intended use, improvements, access, water and power sources, fuel)
  - Environmental Risk Questionnaire (note that lessee's are liable for contamination)
  - Survey & Appraisal
- **Rent.** Rent is determined via DNR schedule or appraisal (subject to 5-year adjustment).
- **Review of Application & Agency Review.**
- **Preliminary Decision:** Upon successful review, the state will issue an 'Entry Authorization' which is a temporary, conditional permit that allows applicant (lessee) to enter and make preliminary use of the site pending issuance of a final lease.
- **Activities Pending Issuance of Lease:** An applicant under an entry authorization must strictly adhere to stipulations and terms. Failure to meet requirements could mean termination and loss of lease.

# Special Issues with Tidelands Leases

**Tidelands Lease Procedures Are the Same as Land Lease Procedures but..  
Raise some Special Issues**



# Special Issues with Tidelands Leases Cont.

## Who Owns Alaska's Tidelands and Shorelands?

- ❑ “**Uplands**” means land above the line of mean highwater.
  - Owned by the Upland Owner
  
- ❑ “**Tidelands**” are lands between mean high water and mean low water
  - Owned by the State of Alaska subject to an easement for public access
  - Tidelands may include marsh, mudflats, sand dunes, or other periodic tidal areas
  
- ❑ “**Submerged Lands**” are lands between mean low water and seaward a distance of 3 geographical miles. See the federal Submerged Lands Act of 1953
  - Owned by the State of Alaska
  - Subject to the rights of the public to navigation and use
  
- ❑ “**Shoreland**” means land belonging to the state which is covered by non-tidal water that is navigable under the laws of the US up to ordinary high-water mark. i.e., ‘navigable waterways’.
  - Shorelands are owned by the State of Alaska subject to primary federal rights. **Not the subject of this presentation.**
  - Riverbed land is “shoreland”
  - One whose property borders a stream or river is a “riparian landowner”.



# Special Issues with Tidelands Leases Cont.

- **Rivers Treated Like Tidelands** – Subject to primary rights of navigation.
- **Riparian Landowner & Riparian Rights:** One whose property borders on a stream, river, or waterway is known as a “riparian landowner”. See. *State v. Alaska Riverways* (Alaska 2010)
- **Reliction:** The emergence of existing soil either due to water receding or the ground rising, generally due to seismic activity or glacio-isostatic uplift. Same as accretion and is treated as an addition to the Uplands parcel.
- **Erosion:** Reduces the size of the Upland and increases the size of the Tidelands Lease.

# Special Issues with Tidelands Leases Cont.

- **Commercial Dock, Wharf or Marine Facility, Boat Ramp, Breakwater.**

- **Scope of Use:** Must be shared. Tidelands leases are non-exclusive. Note that in Alaska tidelands are owned by the State and open to the public irrespective of upland ownership.

- **Uplands Owners & Tidelands Lease:** Upland owner may be granted a preference right to lease without a competitive bid. AS 38.05.075(c). Where applicant is not the upland owner, applicant needs agreement with upland owner for the proposed use.

- **USACE 404 Permit – Applicant must show rights in the tideland.**

- **Personal Docks -** Recreational or personal docks typically do not require tidelands leases. DNR's practice is to allow docks in marine waters without a permit. See 11 AAC 96.020(a)(b) . . . But must not interfere with public access or another public use.

# DOT&PF Airport Leases

## *DOT&PF Airport Lease – AS 02.15.090*

- **Term:** Not longer than 55 years.
- **Options to Extend:** The lessee of a DOT airport lease can apply to extend the lease term based on investment, purchase price, fair market value, or remaining useful life of permanent improvements not already used to set term. Additional 5-year terms not based on investment can be applied for.
- **Renewal Rights:** At the expiration of an airport lease term the lessee has the option to re-apply but there is no automatic right of renewal or preferential lease right.
- **Scope of Rights:** Lessee's generally have a right to construct permanent improvements. However, any site preparation, construction, or demolition requires additional permitting. Non-aeronautical uses are permitted (retail, dining, hospitality, offices, storage, etc.).
  - With these rights come liabilities as well, when a lessee uses their lease they become liable for any contamination on the leased premises. Lessees can avoid liability for prior contamination by conducting ESA and submitting findings to DOT&PF prior to application approval.
  - Some uses, such as non-aeronautical uses, require FAA approval which triggers NEPA review.

# DOT&PF Airport Leases Cont.

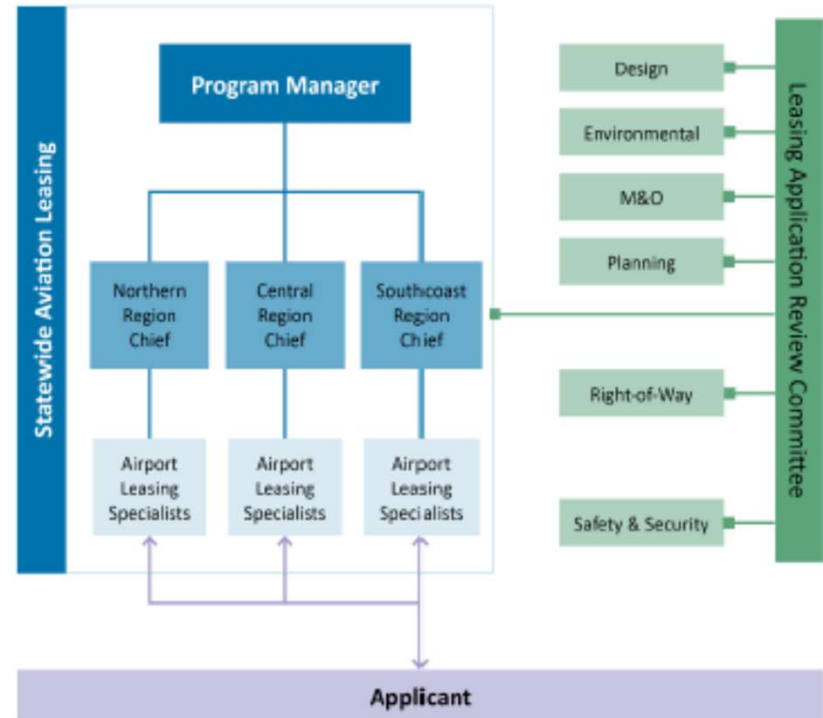
## *Land Leases & Tidelands Lease – cont.*

- **Who owns the improvements:** Generally, a lessee owns title to any permanent improvements constructed by Lessee unless the lease expressly provides that the state owns permanent improvements.
  - At the conclusion of the lease term the Lessee can sell the improvements to succeeding lessee; opt to have the State sell the improvements at public auction; remove the improvements at Lessee's sole expense.
  - Title to any permanent improvements will vest in the state if the state purchases or otherwise contracts with the lessee; or if Lessee abandons the permanent improvements.
- **Assignment & Transfer:** Airport leases are generally assignable with consent from DOT.

# DOT&PF Airport Leases - Procedure

## Procedure

- Consultation with a State Airport Leasing Specialist
- Submit Application
- Airport Leasing Specialist review.
- Leasing Application Review Committee (LARC) review
  - There are members from six divisions of DOT&PF that review applications for different issues.
- Potential revisions.
- 30-day public notice and comment period.
- Approval.... You're not done yet
  - Additional permitting for construction projects.
  - NEPA process for any FAA required approvals.



# *Easements and Other Rights*

## **AS 38.05.850**

- **Interests other than a Lease: Permits & Easements**
  - The Commissioner may issue permits and easements in their discretion.
  - Often for uses not requiring exclusive use
  - See 11 AAC 51.010



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Questions?

