

Attachment F

Stipulations Set Forth by the Department of the Air Force

Elmendorf Air Force Base, Alaska

The following stipulations were requested by the Department of the Air Force by a memo dated December 18, 1975:

1. "Installation, operation and maintenance of the fishery is to be as outlined in Cooperative Agreement between Commissioner, Alaska Department of Fish and Game and Commander, 21st Air Base Group, Elmendorf Air Force Base. Any deviation will be coordinated with the Commander, 21st Air Base Group prior to actual on-site change."
2. "All new construction will be approved by the Commander, Elmendorf Air Force Base or his delegated representative prior to commencement of work."

The following stipulations are required by the Department of the Air Force Letter of Non Objection, signed on January 27, 2009:

1. The lease term is hereby leased to the State for twenty-five (25) years, beginning April 17th, 2009, and ending April 17th, 2034. The Secretary of the Air Force may terminate the lease if the President or Congress declares a national emergency that necessitates such termination in the national public interest. Upon request of the State of Alaska and approval by the Department of the Air Force, the term may be extended another 25 years for a maximum term of 50 years.
2. That the use and occupation of the land incident to the exercise of the privileges leased shall be subject to such rules and regulations regarding ingress, egress, safety sanitation and security as the Air Force, may from time to time prescribe.
3. The State agrees that it has inspected and accepts the condition and state of repair of the Property. It is understood and agreed that the Property is leased in an "as is, where is" condition without any representation or warranty by the Government concerning its condition, and without obligation on the part of the Government to make any alterations, repairs, or additions. The Government shall not be liable to the State for any latent or patent defects in the Property. The State acknowledges that the Government has made no representation or warranty concerning the condition and state of repair of the Property nor any agreement or promise to alter, improve, adapt, or repair them.
4. Subject to a specific appropriation by the legislature for this purpose, the State agrees to indemnify, defend and hold harmless the Air Force from any damages, costs, expenses, liabilities, fines, or penalties resulting from releases, discharges, emissions, spills, storage, treatment, disposal, or any other acts or omissions by the State, its officers, agents, employees, or contractors, or licensees, or the invitees of any of them, giving rise to government liability, civil or criminal, or responsibility under federal, state, or local environmental laws. All parties to this agreement recognize and agree that the State has no appropriation currently available to it to indemnify the Air Force under this provision

and that enactment of an appropriation in the future to fund a payment under this provision remains in the sole discretion of the legislature and the legislature's failure to make such an appropriation creates no further liability or obligation of the State. This condition shall survive the expiration or termination of the lease, and the State's obligations hereunder shall apply whenever the Government incurs costs or liabilities for the State's actions of the types described in this condition.

5. The State may elect to remove any toxic or hazardous wastes, substances or materials found on any portion of the Property, including the old cooling pond, at its sole expense in order to complete the hatchery project. Alternatively, the State may elect to cancel the hatchery project, and terminate the lease after restoring the property to its condition as it existed on the date of the signing of the lease, provided it has first stabilized any disturbed contamination in accordance with applicable state and federal laws if the contamination was not caused by the State. The State will be responsible for remediation of any contamination resulting from its operations on the Property. Except as provided in this paragraph, the State is not responsible for any preexisting condition on the Property that it has not caused or negligently exacerbated.
6. The existing dam will remain in place and in good working order as a barrier to fish passage. ADF&G will take no action to seek removal of the dam or to facilitate fish passage through the dam. ADF&G recognizes Air Force's belief that removal of the dam and fish passage would adversely impact flying operations at Elmendorf AFB. Any actions by ADF&G to seek removal of the dam or facilitate fish passage may result in the lease being terminated.
7. The State recognizes that the Department of Defense has multiple water sources on Elmendorf AFB and Fort Richardson which the Air Force asserts are being used to serve the primary purposes for which these military installations were reserved from the public domain. The State further recognizes that the Air Force asserts these water sources are entitled to Federal Reserved Water Rights status, applicable to all surface, subsurface, and groundwater sources, with a priority date of 1939. The State will in good faith work with the Air Force through the appropriate State agency when issuing temporary water use authorizations, permits to appropriate water, certificates of appropriation, or any other water rights instruments (water rights) potentially affecting the asserted federal reserved rights status of all eligible water sources on the installations to allow the Air Force to assert its water rights, without waiving any other claims to water rights as may exist. The State has used a hydrologic model to support its opinion that the State's pumping of groundwater on the leased Property will not negatively impact the Air Force's existing water sources at this time. The Air Force has relied upon the State's representations. The State may pump water from the underground aquifer on the leased Property for the purpose of operating the fish hatchery. The State agrees to work with the Air Force in good faith to ensure its water pumping activities related to the fish hatchery will not interfere with nor negatively impact in the future, the Air Force's water usage or supply, or water sources on Elmendorf AFB and Fort Richardson that are necessary for future military requirements or operations, including military housing and reasonable military Morale, Welfare and Recreational (MWR) activities.

In the event that the State's water pumping from the leased Property for the purpose of operating the fish hatchery negatively impacts the installation's ability to pump and use enough water to meet its mission, operational, housing and MWR requirements for water, the State agrees to take reasonable and necessary action to remedy that water loss due to its fish hatchery operation, including reducing the State's water use for the hatchery operation, increasing conservation measures, and/or providing feasible alternative water sources for the installation to make up for the amount of water lost due to the hatchery operation. The State agrees it will not seek to drill new wells within the boundary of the installation, including the leased Property, or transfer or sell any water rights or permits it may have or acquire for wells or sources for withdrawing water currently located within the boundary of the installation, including the leased Property, without the approval of the Air Force, as long as the installation remains an Air Force installation. In the event this lease is terminated, the State agrees to abandon any water rights it may have acquired on the leased Property, and to dismantle and cap any wells on that Property in accordance with State law and sound engineering practice, and in coordination with the Air Force. The State affirmatively waives any legal right or claim, including monetary damages, against the Air Force regarding water usage for operation of the fish hatchery, in the event the Air Force increases water usage at the installation to accomplish mission requirements which may impact the wells, any water right, or activities of the State on the leased Property.

The parties acknowledge that neither this document nor the accompanying lease will alter or supersede the law regarding water rights applicable under state or federal law, or any determination or adjudication of such rights under that law, except as otherwise provided herein.

8. That the Government reserves to itself the right to construct, use and maintain across, over and/or under the described land, electric transmission, telephone, water, gas, gasoline, oil and sewer lines and other facilities, in such manner as not to create any unreasonable interference with hatchery operations or other described use of the described land.
9. That the Government shall not be responsible for damages to Property or injuries to persons which may arise from or be incident to the use and occupation of the premises, and/or any related construction activities associated therewith, or for damages to the Property of the State, or for damages to the Property or injuries to the person of the State's officers, agents, servants or employees or others who may be on said premises at their invitation or the invitation of any one of them, arising from or incident to State activities. Subject to a specific appropriation by the legislature for this purpose, the State agrees to indemnify, defend and hold harmless the Air Force from any and all such claims not including damages due to the fault or negligence of the Air Force or its contractors. All parties to this agreement recognize and agree that the State has no appropriation currently available to it to indemnify the Air Force under this provision and that enactment of an appropriation in the future to fund a payment under this provision remains in the sole discretion of the legislature and the legislature's failure to make such an appropriation creates no further liability or obligation of the State.

10. The rights leased shall be without cost or expense to the Government.
11. That no other authority is conveyed by this NON-OBJECTION, implied or otherwise.
12. No new construction, additions to, or alterations of the premises which substantially alter land use or operations of the facility described in the State's Environmental Assessment, dated 14 October, 2008, will be made without obtaining prior approval from Elmendorf Air Force Base.
13. The State agrees to comply with all applicable federal, state, and local environmental laws and regulations, including the Archeological Resources Protection Act, 16 U.S.C. 470aa-470mm.
14. Upon termination or expiration of the lease, the State agrees to restore the real Property to its condition at the time of the signing of the lease by removing all improvements and or buildings from the leased land, or at Government's option, the State agrees to give title to the Air Force for the improvements upon the Property without remuneration. The Government may provide written notice to the State of its election to require that all or any portion of any improvements on the Property revert or be transferred to the Government, at no cost, on the lease termination date. If the Government elects to have improvements revert or transfer to the Air Force, responsibilities of the State with respect to such improvements shall cease.
15. The use and occupation of the Property shall be subject to the general supervision and approval of the Commander of Elmendorf AFB and to reasonable rules and regulations that the Commander may prescribe from time to time.
16. The State acknowledges that it understands that the Base is an operating military installation and that State's operations may from time to time be hampered by temporary restrictions on access, such as identity checks and auto searches. The State acknowledges that it understands that Elmendorf AFB is an operating military installation that could remain closed to the public and accepts that the State's operations may (i) from time to time be restricted temporarily or (ii) be permanently terminated in the event of a congressional or presidential declaration of national emergency that necessitates such termination in the national public interest. Access on the installation may also be restricted due to inclement weather and natural disasters. The State further acknowledges that the Government strictly enforces Federal laws and Air Force regulations concerning controlled substances (drugs) and agrees that the Government will not be responsible for lost time or costs incurred due to delays in entry, temporary loss of access, barring of individual employees from the base under Federal law, authorizing actions, limitation, or withdrawal of an employee's on-base driving privileges, or any other security action that may cause employees to be late to or unavailable at their work stations, or delay arrival of parts and supplies.

17. This statement is furnished in lieu of a formal out lease instrument in that the land is leased to the State of Alaska, Department of Fish & Game by Serial Number AA-91143, by the Bureau of Land Management, Alaska. BLM will issue the formal instrument for the land usage incorporating therein the special conditions listed above.