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## Regional Manager's Decision

ADL 108800 – Southeast Alaska Land Trust  
AS 38.05.850

### I. Requested Action

The Southeast Alaska Land Trust, the Applicant, has requested a public easement over a small portion of State tideland on North Douglas Island within the Mendenhall Wetlands State Game Refuge for bank stabilization work and the placement of a pedestrian staircase. The staircase is intended to provide safe public access to the area, and will begin near the N. Douglas highway and descend toward the intertidal area in Gastineau Channel. The Applicant owns the adjacent upland parcel. Approximately 12 cubic yards of rip rap will be deposited in the Game Refuge area to allow for bank stabilization work. The Alaska Department of Fish and Game (ADF&G) has issued a habitat permit for this work and the applicant has also obtained a Nationwide Permit under section 404 of the Clean Water Act for a minor discharge of fill.<sup>1</sup>

#### Proposed Action

DMLW plans to issue a public easement for the requested use of state tideland for an area approximately 70' x 40', for as long as the easement is used for the expressed public access and maintenance purposes provided therein.

### II. Statutory Authority

AS 38.05.035, AS 38.05.850 and Alaska Administrative Code 11 AAC 55.

### III. Administrative Record

The administrative record for this case is case file ADL 108800.

### IV. Scope of Decision

The scope of administrative review for this authorization [AS 38.05.035(e)(1), (2)] is 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) issues that are material to the determination that issuing the authorization will best serve the interest of the State of Alaska.

### V. Location Information

#### Geographic Location:

Copper River Meridian, T. 41 S., R. 67 E., Sec 8.

#### Legal Description:

Two parcels of land are affected:

- 1) An unsurveyed parcel of State tideland seaward of Lot 43, U.S. Survey 3173
- 2) Lot 43 within U.S. Survey 3173

**Width:** 70'    **Length:** 40'    **Approximate Acreage:** .10

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<sup>1</sup> ADF&G Special Area Permit FH17-I-0171-SA; U.S. Army Corps of Engineers, POA-1993-348.

**Other Land Information**

Municipality: Juneau, City and Borough

Native Corporation: Sealaska

Village Corporation: Goldbelt

Federally Recognized Tribes: Douglas Indian Association and Central Council of Tlingit and Haida Tribes

**VI. Land Status Information**

**Title**

The State of Alaska owns the tide and submerged lands of the project area under the Equal Footing Doctrine and the Submerged Lands Act of 1953.<sup>2</sup>

The United States retains all its navigational servitude control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 1311 of the Submerged Lands Act, 43 U.S.C.

**Planning and Classification**

The subject land is within the Mendenhall Wetlands State Game Refuge (MWSGR), a legislatively designated refuge under AS 16.20.034. As such, the Juneau State Land Plan does not apply. Rather the area is managed in accordance with the MWSGR Management Plan (1990). This Management Plan sets forth three primary goals: 1) the protection of wildlife and wildlife habitat; 2) the protection of fish and marine habitat; and 3) public use – to maintain and enhance use of fish, wildlife, and refuge lands.<sup>3</sup>

ADF&G, as the agency primarily responsible for management of the MWSGR, has issued a permit to the Applicant for the requested activities, and thus, indicating that the activities are consistent with the Management Plan’s goals.<sup>4</sup>

The new staircase will provide improved public access to the Game Refuge. Pursuant to the goal in the Plan. “Maintain public access to and within the refuge consistent with the goals of this management plan.”<sup>5</sup>

Additionally, the staircase structure is intended to enhance public use and enjoyment of the refuge, as such it is within the guidelines established in the Plan. “Allow new permanent structures within the refuge only for the purpose of habitat maintenance and enhancement, public use and enjoyment of the refuge, or essential navigational and navigational aids.”<sup>6</sup>

**Mineral Orders**

There is no mineral leasing in the Game Refuge under the Management Plan. There is no mineral order for the easement area.

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<sup>2</sup> RPT 9532 DNR Realty Services

<sup>3</sup> MWSGR Management Plan, p.4-5

<sup>4</sup> ADF&G Special Area Permit FH17-I-0171-SA

<sup>5</sup> MWSGR Management Plan, p.7

<sup>6</sup> *Id.* p.10

**Traditional Use Finding**

AS 38.05.830 requires the consideration of effects that the proposed lease will have on the density of the population near the proposed site, and potential for conflicts with the traditional uses of the land that could result from the lease. However, because the requested parcel is within the City and Borough of Juneau, a traditional use finding is not required.

**VII. Third Party Interests**

There are no third-party property interests in the prospective tidelands requested by the Applicant.

**VIII. Background**

The Applicant owns the upland lot adjacent to the requested easement area and has used this area to allow for parking and public access to the Game Refuge. A landslide occurred on the slope adjacent to the lot and rendered the slope unsafe for public access to the tideland area. With this request the Applicant plans to stabilize the slope/bank and install a staircase to provide safe public access to the Game Refuge.

**IX. Public Notice & Agency Review**

**Agency Review Summary**

The Applicant’s request was provided to agencies to review from November 21 through December 06, 2017. The Alaska Department of Fish and Game (ADF&G) was the only agency that responded. ADF&G replied that they issued a special area permit to the Applicant for work in the Game Refuge (FH17-I-0171) and had no additional comments.

**X. Access**

**Physical and Legal Access**

Public access and use of the prospective easement area shall be maintained at all times with only reasonable exceptions as required for public safety during installation and maintenance activities.

**Access to and Along Public Waters:**

Pursuant to AS 38.05.126(a), the public has a constitutional right to free access to, and use of, navigable or public waters of the State of Alaska. Under 11 AAC 51.045 and AS 38.05.127, DMLW is required to reserve specific public-access easements to and along these waters.

**XI. Environmental Considerations**

It is our management responsibility to protect the overall public interest if there is a reasonable expectation that a hazardous condition, or hazardous, toxic or radiological material or contamination from such material exists or is known to exist on the land proposed for lease. There are no hazardous conditions known to exist at the proposed site.

The applicant is expected to inspect the prospective lease site and familiarize itself with the condition and quality of the land. The state makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land. The State of Alaska does not assume any liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances ever be identified.

**XII. Performance Guaranty**

Performance guarantees are a means to protect the State from risks incurred by a proposed project. The risks to the State associated with this project are minimal and no performance guarantee will be required.

**XIII. Insurance**

Applicant shall secure or purchase at its own expense, and maintain in force at all times during the term of this easement, the following policies of insurance to protect both themselves and the State of Alaska (its officers, agents and employees):

**General Liability Insurance Policy:** Such policy shall have minimum coverage limits of no less than \$1,000,000 combined single limit per occurrence.

**XIV. Survey**

An as-built survey indicating the location of the staircase and fill material in relation to the natural mean-high-water line and Lot 43 is required. The applicant shall contact DNR survey section for survey instructions prior to the issuance of the easement.

**XV. Fees**

The fee for a public easement is established in 11 AAC 05.010(e)(12), a one-time fee of \$50 per acre. This easement is approximately .01 acre and thus a one-time fee of \$50 applies.

**XVI. Term**

**Easement Term:** Until no longer used for the purposes described herein.

**XVII. Discussion**

One of the primary management goals of the Game Refuge is to maintain and enhance use of fish, wildlife, and refuge lands. The proposed bank stabilization project and staircase structure are intended to enhance public use and enjoyment of the refuge. As such, it is within the management guidelines established in the MWSGR Management Plan. Furthermore, it is in the economic benefit of the State to enhance public use and enjoyment of the refuge.

**XVIII. Recommendation**


Issue a public easement to the Applicant for the purposes described above.

SIGNATURE PAGE FOLLOWS

  
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Adam Moser, NRS

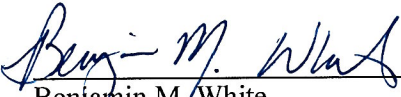
12/13/17  
Date

**Natural Resource Manager's Concurrence**

  
\_\_\_\_\_  
Steve Winker, Natural Resource Manager

12/13/2017  
Date

**XIX. Regional Manager's Decision**

  
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Benjamin M. White  
Southeast Regional Manager

Dec 14, 2017  
Date

Attachments:

- Standard Easement with Stipulations

The public is invited to comment on this preliminary decision. Written comments must be received by DNR no later than 5:00 p.m. on Friday, January 12, 2018. All comments must be submitted to: DNR, Division of Mining, Land and Water, Southeastern Regional Office by mail at 400 Willoughby Avenue, P.O. Box 111020, Juneau, AK 99811-1020, by fax at 907-465-3886, or by electronic mail to adam.moser@alaska.gov in order to ensure consideration. Please include your mailing address and telephone contact. DNR reserves the right to issue additional public notice as it determines necessary.