STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
Division of Mining, Land and Water
Southcentral Regional Land Office

Regional Manager's Decision

ADL 233656
Jordan Pond
Public Access Easement
Access Trail

REQUESTED ACTION
On July 10, 2020, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), received an application for a public easement from Jordan Pond (the applicant) to provide legal access from the mean high tide line of Johnstone Bay to the applicant's properties within Plats 94-36, 81-17, and 79-24 of the Seward Recording District. The proposed easement is depicted in Figure 1.

RECOMMENDED ACTION:
Approval of an easement with the following parameters:

- Length: 2,487 feet in length
- Width: 60 Feet in width
- Acreage: Approximately 3.43 acres in size
- Term: In perpetuity.
- Type of easement: Public Access Easement
- Grantee: DMLW will grant the final public access easement to itself on behalf of the public.

SCOPE OF DECISION
The scope of this decision is to determine if it is in the State's interest to authorize an easement for the proposed use. The scope of administrative review for this authorization is limited to (1) reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and regulations; (3) facts pertaining to the land or resources; and (4) issues that are material to the determination that issuing the authorization is in the interest of the State of Alaska. All other aspects of the applicant's project are outside the scope of this decision.

STATUTORY AUTHORITY
This easement application is being adjudicated pursuant to AS 38.05.850 and the Alaska Land Act as amended.

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 1988 Prince William Sound Area Plan, other classification references described herein, and the casefile for the application serialized by DNR as ADL 233656.

LOCATION INFORMATION

Geographic Location

The applicant has requested that DMLW authorize an easement on uplands adjacent to Johnstone Bay near Seward, Alaska.

Meridian Township Range Section

The applicant has applied to use State-owned, DMLW-managed lands within Section 32, Township 2 North, Range 4 East, Seward Meridian.

TITLE

Title Report No. 22150 was received from DNR DMLW's Realty Services Section on January 3, 2022.

The State of Alaska holds title to applicable portions of lands within Section 32, Township 2 South, Range 4 East, Seward Meridian per Patent 50-84-0638 dated August 10, 1984 and filed in the Seward Recording District as document 2012-000854-0. The associated DNR selection casefile is GS 1098.

THIRD PARTY INTERESTS

No third-party interests are affected.

ACCESS

Functional legal access to the state land discussed herein exists via marine travel across Johnstone Bay to the adjacent uplands near the applicant's property

PLANNING & CLASSIFICATION

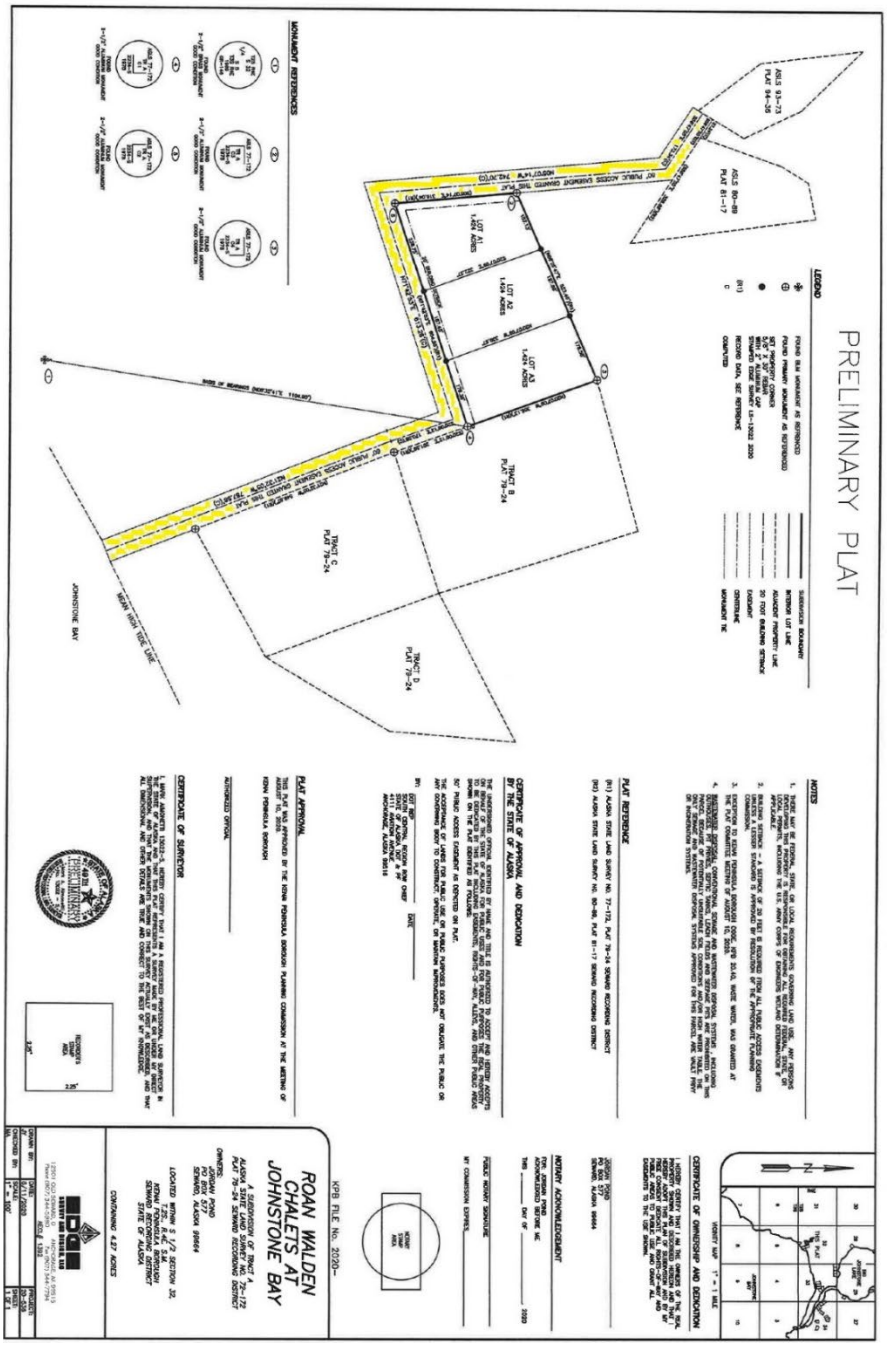
The project area affected by this proposal is discussed in the DNR Prince William Sound Area Plan (PWSAP) for Management of State Lands, which was approved in June of 1988 and partially amended in 2007. The proposed easement is located within Day Harbor Management Unit 15: Subunit 15B. The primary uses for the surface of subunit 15B are forestry, habitat & harvest, and public recreation. The subunit is designated as forestry which converts to forest land; habitat & harvest which converts to wildlife habitat land; and public recreation which converts to public recreation land (Table 4-2, PWSAP).

The applicant's parcels in subunit 15B are derived from DNR's Blying Sound Remote Parcel Sale, which opened in 1983. The PWSAP articulates that "State land not staked in that sale will be retained in public ownership and managed for multiple use" (Page 3-115, PWSAP). Because the applicant is applying for access to his own parcels of land, the trail will also feasibly serve to

provide public access to one other parcel from the Blying Sound Remote Parcel Sale as well as to general state land in the near vicinity as the PWSAP intends.

Issuance of an authorization for the requested infrastructure is consistent with the area plan because it aligns with the management goals and does not conflict with the land classification and resource summary for the referenced management unit.

FIGURE 1 – Preliminary Plat of 60' wide Public Access Easement requested by applicant, Jordan Pond.



PUBLIC NOTICE & AGENCY REVIEW

Public Notice Summary

Public notice of the application was conducted between October 29, 2021 and November 29, 2021. The notice was posted to the State of Alaska Online Public Notice System and was sent to the following recipients:

- Seward Post Office
- Cooper Landing Post Office
- Moose Pass Post Office
- Chugach Alaska Corporation
- Owner of Tract B, Plat 79-24, Seward Recording District, Alaska
- Owner of Tract D, Plat 79-24, Seward Recording District, Alaska

Public Notice Comment & Response

No comments were received during the public review.

Agency Review Summary

Agency review of the application was conducted from October 29, 2021 to November 29, 2021. The notice was sent to the following recipients:

Local Agencies

- Kenai Peninsula Borough, Planning Department

State Agencies

- DNR, DMLW, Survey Unit
- DNR, DMLW, Land Conveyances Section
- DNR, DMLW, Realty Services Section
- DNR, DMLW, Mining Section
- DNR, DMLW, Water Resources Section
- DNR, Division of Parks and Outdoor Recreation (DPOR), Permitting
- DNR, DPOR, Office of History and Archeology
- DNR, Division of Forestry
- DNR, Division of Oil and Gas, State Pipeline Coordinators Section
- DNR, Division of Oil and Gas, Permitting
- DNR, Soil and Water Conservation District
- DNR, Mental Health Trust Authority, Trust Land Office
- Alaska Department of Environmental Conservation (DEC), Division of Environmental Health, Drinking Water Program
- DEC, Division of Environmental Health, Solid Waste Program
- DEC, Division of Spill Prevention, Contaminated Sites Program
- DEC, Water, Alaska Pollutant Discharge Elimination System Program & Wastewater
- Alaska Department of Transportation and Public Facilities (DOT&PF), Statewide Right-of-Way
- Alaska Department of Fish and Game (ADF&G), Division of Habitat
- ADF&G Wildlife Conservation, Access Defense

- Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs, Local Government Assistance

Federal Agencies

- U.S. Army Corps of Engineers, Alaska District

Agency Review Comment & Response

A total of five comments were received during the agency review and are summarized below:

Comment: On October 29, 2021, DEC, Division of Environmental Health, Solid Waste Program commented that they do not object but submitted an advisory that there is no record of a landfill in the location. Therefore, any solid waste unearthed or generated as part of the project must be disposed of in a landfill permitted to accept the waste.
Response: DMLW acknowledged the comment and has forwarded DEC's comments to the applicant.

Comment: On October 29, 2021, DNR DMLW Land Conveyance Section issued a comment of non-objection to the proposed Public Access Easement.
Response: DMLW acknowledged the comment.

Comment: On November 4, 2021, Alaska Mental Health Trust Authority, Trust Land Office replied that they have no comment.
Response: DMLW acknowledged the response.

Comment: On November 4, 2021, DOT&PF replied that they have no comment.
Response: DMLW acknowledged the response.

Comment: On November 29, 2021, ADF&G provided a comment of non-objection and a reminder to the applicant that the harassment of marine mammals is prohibited by the Marine Mammal Protection Act (Public Law 92-522).
Response: DMLW acknowledged the comment and has forwarded ADF&G's comments to the applicant.

No other comments were received

ENVIRONMENTAL CONSIDERATIONS

Fuel, lubricants, and other hazardous materials be will be restricted to those necessary and are to be contained within tools and vehicles when equipment is necessary for construction and maintenance activities. No fuel or other hazardous materials are authorized to be stored on site. There are no other known environmental considerations or constraints in this location.

ECONOMIC BENEFIT & DEVELOPMENT OF STATE RESOURCES

The Region considered three criteria to determine if this project provides the greatest economic benefit to the State and the development of its natural resources. These criteria include direct economic benefit to the State, indirect economic benefit to the State, and encouraging development of the State's resources to provide capital.

Fees collected for approval of the easement described in ADL 233656 will provide a direct economic benefit to the State. In addition, the project will help improve overall public access in a rural area, thereby enhancing conditions for local economic activities and providing an indirect benefit to the state. The proposed use of the described lands is consistent with the legislative intent of AS 38.05.850.

In consideration of these factors, and because there are no competing requests for authorization, approval of this easement will provide the greatest economic benefit to the State.

DISCUSSION

The easement considered herein will be granted for an indefinite term from the effective date of this decision because the need for access to the specified parcel is expected to exist in perpetuity.

PERFORMANCE GUARANTY

A performance guaranty is intended to incentivize compliance with the terms and conditions of the entry authorization and easement. It also provides a mechanism for the State to ensure that the applicant shares in the financial burden in the event of noncompliance (including fee payment, survey, appraisal, etc.), restoration (interim and final), and any associated costs after termination or expiration of the easement. The applicant would be required to submit a performance guaranty in the amount of $5,800.00. These funds will also serve as a survey deposit (per AS 38.05.860) and may be reduced one time during the term of the entry authorization by an amount up to the contracted amount to a licensed surveyor for completion of an as-built survey. This performance guaranty would remain in place during the term of the entry authorization and would be subject to release upon the acceptance of a DMLW-approved as-built survey and the fulfillment of all terms, conditions and stipulations of this decision and the entry authorization. The performance guaranty may also be adjusted to reflect updates and changes in the associated project, and the applicant may be required to provide an additional performance guaranty if DMLW determines there is additional risk to the State. The performance guaranty may be utilized by DMLW to cover actual costs incurred by the State to pay for necessary corrective actions in the event the applicant does not comply with site utilization and restoration requirements and other stipulations contained in the entry authorization. An additional performance guaranty may be required for an extension of the entry authorization beyond the initial term proposed under this decision.

INSURANCE

Given the minimal risks associated with this project, SCRO is not requiring insurance.

SURVEY

A DMLW-approved as-built survey is required to determine the proper location and acreage of installed improvements and the associated easement on State-owned, DMLW-managed lands. The applicant will be required to request survey instructions from DMLW. The survey must be produced in accordance with survey instructions provided by the DMLW Survey Section and stamped by a Professional Land Surveyor registered in the State of Alaska. A final easement will not be issued until the as-built survey has been approved by DMLW.

FEES
The following land use fees are applicable to the proposed authorization. These fees may be adjusted if the departmental fee schedule is amended and will be subject to non-sufficient fund and late payment penalty fees if appropriate. All fees shall accrue from the effective date of the decision.

Entry Authorization:

- The applicant proposes to utilize approximately 3.43 acres of State uplands for the installation of a trail. The applicant shall pay an annual fee of $240.00 minimum for up to two acres and an additional $120 per acre including fractional acres, totaling $480.00, in accordance with 11 AAC 05.070 (d)(2)(I), 11 AAC 05.070(d)(1)(K)(ii), and DMLW Director's Fee Order Number 3 for the term of the EA and any authorized extensions thereof.

Final Easement:

- The applicant proposes to utilize approximately 3.43 acres of State uplands for the installation of a trail. The applicant shall pay a one-time fee of $120 for each acre in accordance with 11 AAC 05.070 (d)(2)(B) and DMLW Director's Fee Order Number 3 prior to issuance of the final easement authorization totaling $480.00. This fee is subject to adjustment based on approval of a DMLW-approved as-built survey.

Additionally, the applicant shall pay any required document recording fees prior to DMLW's execution and recording of the final easement document.

ENTRY AUTHORIZATION
An entry authorization will be issued for a term ending three years from the effective date of this decision for the purpose of constructing, surveying, operating, and maintaining the infrastructure considered herein prior to DMLW's issuance of a public access easement. An extension of the entry authorization may be granted at the written request of the applicant if granting the extension is deemed appropriate by DMLW and may be subject to applicable fees. If an extension is required, the applicant must contact DMLW no later than 30 days prior to the expiration of the entry authorization and certify that there have been no changes to the approved development plan. An entry authorization will not be granted until the following deliverables have been provided to DMLW:

- Land use fees
- A performance guaranty of $5,800.00

RECOMMENDATION

Based upon the information provided by the applicant, as well as review of relevant planning documents, statutes, and regulations related to this application, it is recommended that DMLW issue an easement as described above, subject to all required terms and conditions.

Nathaniel T. Crocker

Nathaniel Crocker, Natural Resource Specialist I
DMLW Southcentral Regional Land Office

1/31/2022

Date

Regional Manager's signature follows

REGIONAL MANAGER'S DECISION

When adjudicating an easement authorization pursuant to AS 38.05.850, DMLW seeks to responsibly develop Alaska's resources by making them available for maximum use and benefit consistent with public interest. In consideration of all events and criteria listed above, I hereby determine that the authorizations to be granted by this decision are consistent with DMLW's mission, that this project is consistent with the overall classification and management intent for this land, and that issuance of an authorization as described above is in the interest of the State of Alaska. The Department assumes no responsibility for maintenance or liability for injury or damages attributable to this authorization.

This decision may be rescinded by written notification if, after 60 days from the effective date of this decision, the applicant has not completed all requirements outlined in this decision for issuance of the authorization. Additional time may be allotted to complete these requirements; however, this will not extend the total term of the authorizations issued under this decision.

AJ Wait

AJ Wait, Natural Resource Manager II
DMLW Southcentral Regional Land Office

1/31/22
Date

ATTACHMENTS

Draft Entry Authorization

APPEAL

A person affected by this decision may appeal it in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of "issuance" of this decision, as defined in 11 AAC 02.040(c) and (d) and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-(907) 269-8918, or sent by electronic mail to dnr.appeals@alaska.gov.Under 11 AAC 02.030, appeals and requests for reconsideration filed under 11 AAC 02 must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F)which has been set at $200 under the provisions of 11 AAC 05.160 (a) and (b).

If no appeal is filed by the appeal deadline, this decision becomes a final administrative order and decision of the department on the 31st calendar day after issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to the Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.