

**STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER**

**Southeast Regional Land Office
Regional Manager's Decision**

ADL 26505

RAVEN AND CANNON ISLAND HOMEOWNERS ASSOCIATION

Application for Easement
AS 38.05.850

Executive Summary

On November 25, 2019, the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW) received an application for a private non-exclusive right of way (ROW) easement from Raven and Cannon Island Homeowner's Association (HOA). The preexisting ROW, also known as Cannon Island Drive, consists of two tracts (Tract A and Tract B) on state-owned, DMLW-managed tidelands in Sitka, Alaska. The easement is approximately 1,016 feet in length, 40 feet in width, containing 0.93 acres, more or less. Tract A connects Raven Island to the junction with Sawmill Creek Road and is approximately 877 feet in length. Tract B connects Cannon Island and Raven Island and is approximately 139 feet in length. The State of Alaska intends to authorize this easement. A diagram of the proposed easement is included as Attachment 1.



Figure 1. Aerial photo of Tract A and Tract B of the proposed easement on Raven and Cannon Island.

Proposed Action

DMLW will issue a 25-year private, nonexclusive right-of-way easement on state-owned, DMLW managed tidelands near Sitka, Alaska connecting private residential properties on Raven and Cannon Island to Sitka. The ROW easement provides sole vehicular and pedestrian access from Sitka to Raven and Cannon Island. DMLW will authorize the 25-year term easement upon receipt of required deliverables. A draft easement agreement is included as Attachment 2.

Statutory Authority

This easement application is being adjudicated pursuant to AS 38.05.850, the Alaska Land Act as amended, and AS 38.05.127.

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 Northern Southeast Area Plan (NSAP, 2002) and other classification references described herein, and the casefile for the application serialized by DNR as ADL 26505.

Scope of Decision

The scope of this decision is to determine if it is in the State's interest to create 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.

Location Information

Geographic Location: West of Jamestown Bay, beginning at the junction of Sawmill Creek Road and Cannon Island Drive, south to Raven and Cannon Island in Sitka, Alaska.

Property Description: DMLW managed tidelands located in Section 6, Township 56 South, Range 64 East, Copper River Meridian.

Width: 40 ft **Length:** 1016 ft **Approximate Acreage:** 0.93

Other Land Information

Municipality: City & Borough of Sitka
Regional Corporation: Sealasaka Corporation
Village Corporation: Shee Atika, Inc.
Federally Recognized Tribe: Sitka Tribe of Alaska

Title

The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying Jamestown Bay in the section(s) referenced above, on the basis of the Equal Footing Doctrine, and the Submerged Lands Act of 1953.

Planning and Classification

The proposed site is subject to the Northern Southeast Area Plan (NSAP, October 2002) and located within the Sitka Sound Tidelands Resource Management Zone (SSTRMZ) for Marine Waters and Tidelands (NSEAP, 2-19). The designated land uses are Habitat (Ha) and Undeveloped Recreation (Ru) which convert to Wildlife habitat land as the land classification.

11 AAC 55.230: Land classified wildlife habitat is land which is primarily valuable for (1) fish and wildlife resource production, whether existing or

through habitat manipulation, to supply sufficient numbers or a diversity of species to support commercial, recreational, or traditional uses on an optimum sustained yield basis; or (2) a unique or rare assemblage of a single or multiple species of regional, state, or national significance (NSEAP 4-3).

Areas such as the SSTRMZ are assigned a Tidelands Management designation in cases where individual management units are not able to adequately capture the diversity, concentration, and intensity of marine resources and public use.

The [...] SSTRMZ is also used for a wide variety of traditional, recreational, and personal use activities, primarily by the residents of the community of Sitka. The tideland areas depicted on the same Plan map as 'Undeveloped Recreation', or co-designated Habitat (Ha) and Undeveloped Recreation (Ru) and represent the most important of these areas, but essentially the entirety of the Tidelands Management Zone is used for these activities to varying degrees. Authorizations issued by the Department within areas designated Undeveloped Recreation or co-designated Undeveloped Recreation and Habitat should ensure that the authorized use does not conflict with the traditional, recreational, personal use activities, or public access to areas where these activities occur (NSEAP 3-125).

SSTRMZ Management Intent

The marine and intertidal waters of the SSTRMZ support a myriad of activities. Pacific herring utilize the shoreline for spawning and the marine waters for overwintering. Waterfowl and shorebirds are found to concentrate throughout this area in the spring and fall. Chinook, coho, pink, chum, and sockeye salmon along with anadromous steelhead use these areas for rearing, schooling, spawning, and migration. Brown bears concentrate along the shoreline/upper intertidal area throughout this tidelands management area (NSEAP 3-124).

The zone's management intent is

- to protect the sensitive fisheries, marine mammal concentration areas, shorebird and waterfowl concentration areas, anadromous streams, and areas of estuarine wetlands, as well as brown bear and deer winter concentration within intertidal areas.
- to preserve and protect the customary, traditional, recreational, and personal use resources, and public access to these resources (NSEAP 3-124).

The management intent and land classification for this site does not prohibit use and maintenance of an access road. General Area Plan management guidance states, "although there may be a priority for use in certain units, other uses may be allowed.... if they do not foreclose the area for its priority use" (NSEAP 2-2). The proposed ROW easement was first authorized by DNR in 1965. It is located on tidelands in a populated area of Sitka subject to intensive multiple uses. The applicant, as well as the prior authorization assignee, have maintained and utilized Tract A

and Tract B with minimal impact to habitat and resources over the entirety of the easement's duration. Continuing ROW access, utilization, and maintenance are consistent with the Area Plan's management intent and not expected to conflict with designated SSTRMZ priority uses.

According to 11 AAC 55.040(c), "A classification identifies the primary use for which the land will be managed, subject to valid existing rights and to multiple use."

Third Party Information

None.

Background

- March 22, 1965
DNR issues ADL 26505. The authorization permits a right-of-way easement across state-owned tidelands adjoining USS 3695 (Sawmill Creek Road) and USS 2187 (Raven and Cannon Island).
- July 17, 1999
ADL 26505 amended to include an updated legal description and as-built diagram.
- November 23, 2019
Raven and Cannon Island Homeowner's Association applies for reissuance of easement ADL 26505. DMLW notifies applicant a relinquishment affidavit signed by the original easement assignee is required.
- December 26, 2019
Dangel Family Trust submits a Relinquishment and Environmental Hazard Evaluation Affidavit, allowing DMLW to proceed with Raven and Cannon Island HOA as applicant.

Public Notice & Agency Review

Agency Review Summary

An Agency Review was conducted July 21, 2023, to August 21, 2023. The following organizations were included in this review: Alaska Department of Fish and Game (ADF&G), Alaska Department of Environmental Conservation (DEC), and Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation, Office of History and Archaeology, and the Department of Transportation & Public Facilities (DOT&PF).

Agency Review Comment and Response

ADF&G

Summary: ADF&G has no objections to the issuance of this easement renewal however we have the following comment: Please remind the applicant that the non-exclusive right-of-way easement across state will persist as a public access route. No action should be taken that would impede public use.

DMLW Response: Thank you for providing this comment on the application for easement, ADL 26505. It will be included in the decision document.

DOT&PF

Summary: Thank you for the opportunity to review the proposal. The Alaska Department of Transportation and Public Facilities has no comment at this time.

DMLW Response: Thank you for your response.

Public Notice Summary

Notice of this application was posted on the Alaska Online Public Notice System website and sent to the following known interested parties: National Oceanic and Atmospheric Administration (NOAA), U.S. Army Corps of Engineers (USACE), U.S. National Forest Service (USDA NFS), Alaska Association of Conservation Districts (AACD), Southeast AK Conservation Council (SEACC), Central Council Tlingit and Haida Indian Tribes of Alaska (CCTHITA), Shee Atika, Incorporated, Sealaska Corporation, Sitka Tribe of Alaska (STA), City and Borough of Sitka (CBS), Raven and Cannon Island Homeowners Association.

DMLW received no comments from the public.

Access

Physical and Legal Access: The applicant may access the site over state-owned tide and submerged lands underlying Jamestown Bay, a navigable water body.

Environmental Considerations

DMLW considers the environmental factors directly related to authorizing the use of State lands as part of its determination of whether approving the authorization is in the State's interest. The purpose of this consideration is to identify any associated mitigation measures or other requirements necessary to protect the public interest, while informing the overall decision of whether to approve the authorization. The applicant is responsible for determining site suitability.

Environmental contamination risk associated with this proposed easement is minimal. No fuel or other hazardous materials will be stored on state land. Fuel, lubricants, or other hazardous materials will be restricted to those necessary and contained within vehicles when such equipment is necessary for ROW maintenance. Disturbance to the tideland environment from periodic ROW maintenance is expected to be minimal. There are no other known environmental considerations or constraints in this location.

Economic Benefit and Development of State Resources

In accordance with AS 38.05.850, DMLW considers three criteria to determine if this project provides the greatest economic benefit to the State and the development of its natural resources: direct economic benefit to the State, indirect economic benefit to the State, and encouraging development of the State's resources.

ROW easement ADL 26505, also known as Cannon Island Drive, provides vehicle and pedestrian access to Sitka. At present, Raven and Cannon Islands are subdivided into six lots with residences or domiciles on each lot. This indirectly benefits the State in the form of taxes, levies, fees, etc. assessed on residential properties by the City and Borough of Sitka. The

easement also provides a modest but direct economic benefit to the State through the annual fees it generates.

Discussion

DNR authorized ADL 26505 in 1965. The applicant and/or prior assignee have been solely responsible for ROW upkeep and repair, with a documented record of satisfactory maintenance, over the entirety of the authorization's term. Raven and Cannon Island is currently subdivided into six lots, each containing domiciles, for which the ROW provides sole vehicular access. The applicant's property and personal interests depend directly on ROW viability and, thus, constitute an effective incentivization to performance.

Performance Guaranty

Performance guarantees are means to assure performance and to provide ways to pay for corrective action if the permittee fails to comply with the requirements set forth in the permit document. They are also used to protect state land from damage and to make certain that improvements are removed and that the land is returned in a usable condition upon termination of the permit.

History of Compliance: DNR Land Administration System records indicate that the applicant is in a state of compliance with the terms of other DMLW-issued authorizations.

Performance Guaranty Narrative:

A performance guaranty is intended to incentivize performance of the conditions of the EA and Easement and provide a mechanism for the state to ensure that the grantee 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 authorization. In consideration of the low risk associated with the proposed authorization, the requirement for a performance guaranty is waived. Future compliance is justifiably expected in light of the applicant's history of compliance and established record of satisfactory ROW maintenance and upkeep. Additionally, because the ROW serves an essential infrastructural function for the applicant, its good repair and continuing accessibility is an effective incentivization to performance. DMLW reserves the right to request a performance guaranty during the term of this authorization.

Insurance

Consistent with 11 AAC 96.065, the insurance requirement is waived due to the low-risk of personal, private uses. The state assumes no responsibility for maintenance of improvements constructed within the proposed easement corridor or liability for injuries or damages attributable to that construction. DMLW reserves the right to require insurance in the future.

Survey

In lieu of a Record of Survey, the applicant has provided the as-built Right-of-Way Diagram, included as Attachment 1, which meets the guidelines of the DMLW Surveys Section. In the

event DMLW determines a survey or updated diagram is required, the applicant will comply with all instructions and requirements for submitting a DMLW-approved survey or diagram.

Fees

In accordance with 11 AAC 05.070(d)(1)(A)(i), the annual fee for a private non-exclusive easement containing approximately 0.93 acres is \$480.00.

Recording: The applicant shall pay the appropriate recording fees as determined based on current regulation to have the easement document recorded by DMLW. Recording fees shall be paid prior to the execution of the easement document.

Deliverables

The HOA must submit the required deliverables to DMLW before the final easement agreement will be issued.

- Payment of annual easement fee, \$480.00

Easement Term

The authorization requested under ADL 26505 will be issued for a term of 25 years from the effective date of this decision.

Term Discussion

Easements issued under AS 38.05.850 may be revoked for cause if the area described is no longer used for the purpose intended or if a higher and better use of the land is established as determined by DMLW. Following termination an easement, whether by abandonment, revocation, or other means, a grantee shall restore the site to a condition that is acceptable to DMLW. A grantee's planned site restoration activities, including either removal or abandonment of installed improvements, must be described in writing and present to DMLW prior to termination of the easement. DMLW may require compliance with additional conditions specific to the site restoration effort that were not required for the construction, maintenance, or operation of described improvements. Should a grantee or refuse to perform approved site-restoration activities within the time allotted by DMLW, the improvements may become property of DNR. However, a grantee shall not be relieved of the cost of restoring the area to a condition that is acceptable to DMLW.

Recommendation

In consideration of all events and criteria described above, it is my determination that this project is consistent with the overall classification and management intent for this land and would be a benefit to the State of Alaska. Therefore, I recommend issuance of a private non-exclusive easement to the HOA pursuant to AS 38.05.850, upon satisfactory completion of the project in conformance with all the terms and conditions of this decision. The easement will be issued for a term of 25 years from the effective date of the easement agreement that may be terminated if a

higher and better economic use for the project area is established as determined by DMLW Director, if the land is no longer used for the above stated purpose, or is revoked for cause.

Mason Auger
Mason Auger, Natural Resource Manager 2

02/16/2024
Date

Regional Manager’s Decision

When adjudicating an easement authorization pursuant to AS 38.05.850, DNR seeks to responsibly develop Alaska’s resources by making them available for maximum use and benefit consistent with the public interest. In consideration of all events and criteria listed above, DMLW has determined that the authorizations to be granted under ADL 26505 are consistent with DNR’s mission. It is my decision that this project is consistent with the overall classification and management intent for this land. DMLW will issue a private non-exclusive easement, pursuant to AS 38.05.850, once the applicant has conformed to all terms and conditions of this decision and the EA.

Kaitlyn Raffier
Kaitlyn Raffier, Southeast Regional Manager

02/16/2024
Date

Attachments:

- Attachment 1. Right-Of-Way Diagram
- Attachment 2. Draft Easement

An eligible person affected by this decision, and who provided timely written comment or public hearing testimony to the department, may appeal the decision to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any appeal must be received within twenty (20) calendar days after issuance of this decision under 11 AAC 02.040. An eligible person must first appeal a decision to the Commissioner before seeking relief in superior court. The Alaska State Courts establish its own rules for timely appealing final administrative orders and decisions of the department.

Appeals may be mailed or hand-delivered to the DNR Commissioner’s Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. Appeals must be accompanied by the fee established in 11 AAC 05.160(d)(6), which has been set at \$200 under the provisions of 11 AAC 05.160 (a)-(b). A .pdf or print copy of 11 AAC 02 may be obtained by contacting Erik Fossum via phone at (907) 269-8429, via email at erik.fossum@alaska.gov, and is also available on the department’s website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.