



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

Southeast Regional Land Office

Regional Manager's Decision

ADL 109059

Juneau Hydropower, Inc.

Application for Easement

AS 38.05.850

Requested Action

On April 24, 2020, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW) received an application from Juneau Hydropower, Inc. (JHI) requesting a 50-year, private non-exclusive easement. This easement will be located on state-owned tide and submerged land within Point Bridget State Park and extend approximately 795 feet seaward toward Berners Bay, terminating at the northern boundary of Point Bridget State Park. The easement will be approximately 30 feet wide and occupy approximately 0.55 acres.

The easement will include a high voltage, undersea electric transmission line with fiber optic cable combined. As stated in the applicant's development plan, the cable will be made up of three 69kV AC conductors sheathed together and deployed as a single armored cable bundle designed to reduce electromagnetic fields. The cable will be buried at a depth of two to three feet and armored with rock where necessary. The armoring will be two to five feet thick by approximately 10 feet wide.

The issuance of this private non-exclusive easement was originally proposed in and ultimately dependent upon a preceding land exchange, Point Bridget 2.0, serialized by DNR as ADL 109053. The land exchange is explained further in the discussion section below and the preliminary decision of ADL 109053 is included as Attachment 4.

Proposed Action

DMLW intends to issue the Applicant a private non-exclusive easement for use of state-owned tide and submerged land as described above with a 50-year term. The proposed development plan is included as Attachment 1.

DMLW will issue an entry authorization (EA) for a term of 3 years to allow for construction and completion of a DMLW-approved survey, which is a prerequisite for issuance of the final easement. The term of the EA shall be inclusive of the total easement term of 50 years. A draft EA is included as Attachment 2. A draft private easement is included as Attachment 3.

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, and other classification references described herein, and the casefile for the application serialized by DNR as ADL 109059. Also incorporated by reference are DNR case files ADL 109053 and ADL 109286.

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

Location Description

This private non-exclusive easement will be located across state-owned tide and submerged land within Point Bridget State Park, approximately 40 miles north of Juneau, and extend approximately 795 feet seaward toward Berners Bay, terminating at the northern boundary of Point Bridget State Park. The easement will be approximately 30 feet wide and occupy approximately 0.55 acres. The easement will be located in Section 12, Township 37 South, Range 63 East, Copper River Meridian, Juneau Recording District. A site diagram is included as Attachment 1; however, the required survey will establish exact location and acreage.

Other Land Information

Municipality: City and Borough of Juneau

Regional Corporation: Sealaska Corporation

Village Corporation: Goldbelt Incorporated

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

Title

The State of Alaska holds title to tide and submerged lands on the basis of the Equal Footing Doctrine, the Alaska Statehood Act, and the Submerged Lands Act of 1953. DMLW issued Title Report 21285 on January 5, 2021, during initial research of the preceding land exchange, ADL 109053.

Planning and Classification

The proposed easement will be located within Point Bridget State Park which is a Legislatively Designated Area (LDA) established by AS 41.21.180. Because Point Bridget State Park is an LDA, it is withdrawn from the public domain and is not subject to classification under AS 38.05.300 or the area land use plan (Juneau State Land Plan) developed under AS 38.04.065.

According to AS 41.21.180, “the primary purposes of establishing the Point Bridget State Park are to protect the area's recreational and scenic resources and to preserve and enhance the continued use of the area for hunting and fishing and recreational activities.”

ADL 109059 in conjunction with ADL 109053, support the purposes set forth in AS 41.21.180 - 41.21.183 by improving access to Point Bridget State Park, consolidating land ownership, and enhancing the area for fishing and recreational activities.

Third Party Information

As the adjacent upland owner and recipient of power from the proposed transmission line, Gospel Missionary Union, also referenced throughout relevant documents as Echo Ranch Bible Camp (ERBC), is a third-party interest. JHI holds a cooperative arrangement with ERBC for the use of those uplands near Point Bridget adjacent to the proposed easement location.

Public Notice & Agency Review

Agency Review Summary

An Agency Review was conducted from May 22, 2023, to June 23, 2023. The following organizations were included in this review:

- Alaska Department of Fish and Game (ADF&G)
- ADF&G, Habitat Division
- Alaska Department of Environmental Conservation (DEC)
- Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation, Office of History and Archaeology (OHA)
- Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation (DPOR)
- Alaska Department of Transportation & Public Facilities (DOT&PF).

No comments from agencies were received.

Public Notice Summary

A Public Notice was conducted from May 22, 2023, to June 23, 2023. Notice of this application was posted on the Alaska Online Public Notice System website and sent to the following known interested parties:

- The Juneau Post Office
- The City and Borough of Juneau
- Central Council Tlingit and Haida Indian Tribes of Alaska, Native Lands and Resource Division
- Sealaska Corporation
- Goldbelt, Incorporated
- Douglas Indian Association
- Southeast Alaska Conservation Council
- Alaska Association of Conservation Districts
- Army Corps of Engineers
- National Marine Fisheries Service
- United States Forest Service
- US Fish and Wildlife Service

No comments from the public were received.

Access

Physical and Legal Access: The applicant may access the site over state tide and submerged lands underlying Berners Bay, a navigable water body. The applicant also holds a cooperative arrangement with the Gospel Missionary Union, dba Echo Ranch Bible Camp, owners of the adjacent upland property.

Access to and along Public Waters: Berners Bay is a navigable, public water body. 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. Public access across this easement shall not be restricted in any manner.

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 the proposed easement is expected to be minimal. Fuel, lubricant, and other hazardous materials will be restricted to those necessary for construction and maintenance purposes. Exact use and requirements will depend on contractors and site conditions. As listed in their application, JHI and contractors will follow all federal, state, and local laws and will file Storm Water Pollution Prevention Plans (SWPPP) when necessary. No fuel or other hazardous materials will be stored permanently on site; however, there may be a temporary fuel point coordinated with existing fuel storage facilities located on Echo Ranch Bible Camp property during construction periods. There are no other known environmental 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.

The proposed project provides both direct and indirect economic benefits to the state through annual revenue made and potential jobs created. By allowing a minimally invasive transmission line that aims to provide power to residents of Alaska, the State is encouraging the development of resources in a way that will benefit not only the applicant, but the state as a whole.

Background

On January 17, 2018, the State exchanged approximately 38 acres of surface lands within Point Bridget State Park for approximately 60 acres of surface and subsurface lands owned by Gospel Missionary Union, dba ERBC. This was authorized under ADL 106979 and intended to

consolidate lands within and adjacent to Point Bridget State Park, improve public access to the park, and consolidate lands owned by ERBC. Also included in the ADL 106979 land exchange, was a utility easement to bring power across park lands to the newly acquired site of ERBC.

JHI subsequently applied for a private non-exclusive easement, coinciding with that of the utility easement included in ADL 106979, to provide power to ERBC, and with the intention to continue installation of the electric transmission line beyond ERBC property to ultimately reach and provide power to Kensington Mine. DMLW signed a decision intending to authorize this use on January 3, 2020, serialized as ADL 109033.

In 2019, the State, ERBC, and JHI began negotiations for a secondary, equal value land exchange, known as Point Bridget 2.0, and serialized by DNR as ADL 109053. The three parties proposed to exchange a private non-exclusive easement, of approximately 0.55 acres across State tide and submerged lands to JHI, in exchange for fee title of approximately 0.31 acres of land owned by ERBC adjacent to Point Bridget State Park. Through the exchange and subsequent easement, JHI will provide electric power to ERBC facilities. The preliminary decision of ADL 109053 was signed by DMLW on February 18, 2021, and is included as Attachment 4. The final finding and decision of ADL 109053 was signed by DMLW on April 7, 2021.

On April 24, 2020, while the ADL 109053 exchange decision was still being finalized, JHI submitted an application to DMLW for use of the private non-exclusive easement being proposed in the exchange. The application was serialized as ADL 109059. Adjudication was postponed until the Southeast Regional Office confirmed the land exchange process was moving forward, and a final exchange agreement drafted.

Discussion

This easement will be one part of the Sweetheart Lake Hydroelectric Project proposed by JHI that is intended to supply utility services to the Juneau community. In addition to transmission lines that interconnect with the State of Alaska's Snettisham transmission line operated by Alaska Electric Light and Power (AELP), JHI plans to build a transmission line from AELP's Lena Substation, located north of Juneau near Lena Cove, Alaska, to Slate Creek Cove on the north shore of Berners Bay, also north of Juneau. The intention being to supply Coeur Alaska Kensington Mine and others in that area with electric power. To that end, on September 27, 2022, JHI submitted a separate application for easement which extends from the proposed easement location across Berners Bay to complete the line. This application, serialized as ADL 109286, is currently under adjudication.

Although originally noticed as a 25-year authorization, DMLW has increased the proposed term length to 50 years. This is in keeping with the original request of the applicant as well as similar authorizations of this type. The 50-year term is also more consistent with other licensing terms the applicant holds and the long-term intended use of the project.

During the comment period of the preceding ADL 109053 decision, ADF&G biologists requested that installation of the utility line avoid peak fishing periods to minimize disruptions to public use. DMLW consulted with ADF&G biologists to determine dates and has informed the applicant that construction and maintenance of the utility line should avoid the dates of May 1st -

May 31st, and August 1st - September 30th, if possible. This would minimize interference with seasonal fisheries and other marine resource extraction activities in the area. Final installation will be designed in such a way so that public access across the utility line is not impeded.

It was noted in the applicant's development plan that public access of the site may be only temporarily affected during construction for public safety reasons. However, once the cable is in place, access will be restored. The applicant stated that public access to the waters of Berners Bay will not be blocked to vessels at any time during construction or maintenance.

JHI has acquired additional authorizations, permits, and licenses for the development and construction of the proposed project to meet other federal, state, and local requirements. JHI holds a Federal Energy Regulatory Commission (FERC) license for development of the overall Sweetheart Lake Hydroelectric Project. JHI also holds a 404 Wetlands Permit with the U.S. Army Corps of Engineers for the proposed project. On November 8, 2024, JHI applied to the Regulatory Commission of Alaska (RCA) to become a public utility in light of the services they intend to provide. JHI has also provided DMLW with letters in support of this project from Coeur Alaska and the City and Borough of Juneau.

Broadband technologies play a foundational role in enhancing Alaska's economy through the delivery of advanced telecommunication services to residents and businesses. It is incumbent upon the State to foster and promote development of FOC systems so that the people of Alaska can reap the benefits and conveniences these technologies provide. Furthermore, Administrative Order 310 directs DNR to take all necessary steps to streamline, consistent with Alaska Statutes, the authorization and environmental permitting and review processes required for the construction of broadband facilities that utilize state land¹.

Performance Guaranty

Performance guaranties 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: The applicant is required to submit a performance guaranty in the amount of \$1,000 to ensure completion of EA requirements. This performance guaranty shall remain in place during the term of the EA and will be subject to release upon the acceptance of a DMLW-approved survey and the fulfillment of all conditions and stipulations of this decision and the EA. The guaranty may also be adjusted to reflect updates and changes in the associated project, and the applicant may be required to furnish an additional performance guaranty if DMLW determines there to be additional risk to the State. The guaranty

¹ Administrative Order No. 310, May 29, 2019.

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 EA. An additional performance guaranty may be required for an extension of the EA beyond the initial term proposed under this decision.

Insurance

Consistent with AS 38.05.850, to protect the State from liability associated with the use of the site, the applicant shall provide and maintain a comprehensive general liability insurance policy with the State of Alaska named as an additional insured party per the stipulations of the easement agreement. The applicant shall secure or purchase at its own expense and maintain in force at all times during the term of this easement, liability coverage and limits consistent with what is professionally recommended as adequate to protect the applicant and the State, its officers, agents and employees from the liability exposures of all the insured's operations on state land. The insurance requirement may be adjusted periodically.

Survey

A DMLW-approved survey is required to determine the proper location of installed improvements and the acreage of the encompassing easement on State-owned, DMLW-managed lands. The area shown on Attachment 1 is the basis for the survey. Survey instructions were issued to the applicant by DMLW on February 4, 2022. The applicant must coordinate with the DMLW Survey Section during the survey process. A draft must be submitted to the Survey Section prior to the expiration of the EA and a final survey must be approved by DMLW before issuance of the final easement. Fees for survey instruction, review, and recording will be required and administered through the Survey Section.

Fees

Entry Authorization: In accordance with 11 AAC 05.070(d)(2)(I), the fee for an Entry Authorization for an approved easement or right-of-way for site development is \$240 annually for up to two acres, and \$120 annually for each acre above two. With the proposed easement occupying an estimated 0.55 acres, the annual fee for this Entry Authorization will be \$240. After submission of the DMLW approved survey and any other required EA deliverables, the annual entry authorization fee will be terminated.

Easement: DMLW has policy guidance directing staff to treat companies installing fiber optic cables as public utilities, whether they are regulated by the RCA or not.² Therefore, in accordance with 11 AAC 05.070(d)(2)(C) and the Directors Fee Order (June 2018), a one-time fee of \$0.56 per centerline linear foot will apply for this easement. **The one-time easement fee is estimated to be \$445.20 (795 feet x \$0.56); however, the precise length of the easement and easement fee amount will be determined by the provided survey. The final, one-time easement fee will be due during the Entry Authorization period before the final easement is granted.**

Survey: Fees for survey instructions, review, and recording will be required and administered through the Survey Section.

² DPF 2020-03, June 1, 2020

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.

Entry Authorization

The entry authorization is an interim authorization issued when a survey is necessary prior to easement issuance. Staff recommend that an entry authorization be issued for a term ending 3 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 private easement. The entry authorization may be revoked if the applicant has not supplied DMLW with a draft survey within 3 years of receiving survey instructions. 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 there have been no changes to the approved development plan. Staff recommend that entry authorization not be granted until the following deliverables have been provided to DMLW, as described or recommended above:

- Payment of the Entry Authorization fee, in the amount of \$240.
- Performance Guaranty, in the amount of \$1,000.
- Certificate of Insurance as described in the decision above.
- Corporate Resolution or other form of proof that the signer of the Entry Authorization, Easement, and other documents related to this authorization is authorized to do so on behalf of Juneau Hydropower, Inc.

Easement Term

The authorization requested under ADL 109059 will be issued for a term of 50 years from the effective date of this decision. 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 of 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 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 Juneau Hydropower, Inc. pursuant to AS 38.05.850, upon satisfactory completion of the project in

conformance with all the terms and conditions of this decision and the EA. The easement will be issued for a term of 50 years from the effective date of this decision 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.

Laurel Smith

Laurel Smith, Natural Resource Specialist

1/21/2025

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 109059 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 easement, pursuant to AS 38.05.850, once the applicant has conformed to all terms and conditions of this decision and the EA.

Mason Auger

Mason Auger, Natural Resource Manager

1/23/2025

Date

Attachments:

Attachment 1. Development Plan

Attachment 2. Draft Entry Authorization

Attachment 3. Draft Easement

Attachment 4. Preliminary Decision of ADL 109053 Land Exchange

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 Court System establishes 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)(1)(F), which has been set at \$200 under the provisions of 11 AAC 05.160 (a)-(b). A copy of 11 AAC 02 is available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.