Project Overview

On 1/29/1992, the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Regional Office (SCRO) received a lease application from the United States Forest Service (USFS), Chugach National Forest, Cordova Ranger District for an existing (constructed in 1981) public boat ramp on the Eyak River. Although this application was evaluated in the context of the now-defunct Alaska Coastal Management Program (conclusive consistency determination issued 6/4/1992), no decision or authorization was issued at that time. In 1994 DMLW converted the application from a lease to an easement in consideration of the proposed use and in accordance with AS 38.04.015, which states that there is a public interest in retaining state land in public ownership wherever possible.

According to the USFS the existing facilities no longer meet public needs and in 2013 DMLW received a revised site plan describing proposed improvements to the upland (not State-owned) and submerged (State-owned) facilities. The plans include removing the existing ramp and replacing it with a new one located ~70 feet upstream from the current site. Once the new ramp is constructed, the current ramp will be removed and the streambank will be recontoured and replanted. The proposed project also includes stabilizing the river bank in accordance with 11 AAC 96.020 to reduce erosion from boat wakes and foot traffic, but this activity does not require written authorization by SCRO.

According to the proposed site plan, the new boat ramp will be 30 feet in width, extending approximately 100 feet from Mean High Water (MHW) into the Eyak River, and will be surrounded by approximately 10 feet of cobble armoring on all sides. Therefore the easement under consideration is 60 feet in width and approximately 120 feet in length, occupying approximately 0.17 acres of State-owned submerged land on the bed of the Eyak River within Section 31 of Township 15 South, Range 2 West of the Copper River Meridian. Construction will occupy an additional area of the same dimensions, centered on the existing boat ramp, for the purpose of removing the old ramp once the new ramp is operational. The uplands adjacent to the riverbed in the project area are federally owned. This easement will only apply to state-owned lands within the project area.

Scope of Decision

The scope of this decision is limited to the determination of whether it is in the State’s interest to issue an easement to the USFS for the installation and operation of a public boat ramp on State-owned submerged lands in the Eyak River. All other aspects of the Eyak River Boating Site improvement project fall outside the scope of ADL 225809.

Location

Geographic: This project is located on State-owned submerged lands beneath the Eyak River in Cordova, AK.
**Legal Description:** This project is located within Section 31 of Township 15 South, Range 2 West of the Copper River Meridian.

**Width and Acreage:** The proposed easement is 60 feet in width and approximately 120 feet in length, occupying approximately 0.17 acres of State-owned submerged land.

During construction the USFS will be authorized to use an additional area of the same dimensions, centered on the existing boat ramp, for the purpose of removing the existing ramp after it has been replaced. Therefore the Entry Authorization (EA; described below) for ADL 225809 will consist of two discontinuous areas, each 60 feet in width and approximately 120 feet in length, totaling approximately 0.34 acres of State-owned submerged land.

**Title**

The State of Alaska claims title to lands beneath tidally influenced and navigable waterways within its jurisdiction on the basis of the Submerged Lands Act of 1953 and the Equal Footing Doctrine.

**Authority**

DNR is authorized to execute easements on State-owned land under the provisions of AS 38.05.850. Also referenced in this decision are: AS 38.04.015, AS 38.05.035, AS 40.25.120, AS 41.35, 11 AAC 02, 11 AAC 05.010, 11 AAC 51, 11 AAC 53.050, 11 AAC 96.020, 11 AAC 96.060, 11 AAC 96.065 and 11 AAC 96.070.

**State Plans and Classifications**

ADL 225809 is located in Subunit 28a of the Prince William Sound Area Plan, which includes state owned lands in the Copper River Delta Critical Habitat Area (CRDCHA). Within the CRDCHA land use authorizations are subject to the Alaska Department of Fish and Game (ADF&G) Title 16 Authority concerning the proposed use’s impacts on fish, game and habitat in addition to DNR’s authority under Title 38. Land management is to emphasize existing recreation opportunities including hunting, fishing and wildlife viewing.

The USFS has consulted with ADF&G regarding design and planning for the proposed project. As with any DMLW-issued authorization the USFS is required to comply with all applicable laws, ordinances, regulations, rules and orders, and to obtain and comply with all other required authorizations for the Eyak River Boat Ramp project, including compliance with ADF&G in accordance with Title 16.

The proposed project will enhance existing recreation opportunities by improving public access to the Eyak River.

In consideration of the proposed activities the requested authorization is compatible with the Prince William Sound Area Plan.

**Administrative Record**

The administrative record for this authorization consists of the case file for ADL 225809.

**Public and Agency Notice**

An agency review of ADL 225809 was conducted from September 27 – October 28, 2013. The review notice was distributed to ADF&G, the Alaska Department of Environmental Conservation (ADEC),
the DNR Division of Parks, Office of History and Archaeology (OHA), the Department of Transportation and Public Facilities, the DMLW Land Development and Sales program, the City of Cordova, the Eyak Corporation, the Native Village of Eyak and USACE. Following the agency notice, public notice of the requested easement was posted on the DNR Public Notice Website from January 1 – March 3, 2014.

Chugach Alaska Corporation submitted a comment recommending that the USFS have an archaeologist present during any ground disturbance to provide guidance if any archaeological remains are detected. In planning the Eyak River Boating Site Project the USFS has conducted extensive cultural surveys of the project area in accordance with Section 106 of the National Historic Preservation Act. Where necessary, based on the results of the cultural surveys, the USFS will have an archaeologist present during ground disturbing activities. Furthermore, in accordance with State law the USFS is required to comply with the Alaska Historic Preservation Act (AS 41.35), which seeks to “preserve and protect the historic, prehistoric, and archeological resources of Alaska from loss, desecration, and destruction so that the scientific, historic, and cultural heritage embodied in these resources may pass undiminished to future generations. AS 41.35 is administered by the OHA, who were notified of the proposed authorization and did not object or propose additional mitigation measures.

ADF&G commented that they have no objection to the proposed project provided that public access will not be completely blocked at any point during construction. According to the USFS’s “Decision Notice and Finding of No Significant Impact,” dated 10/29/2012, the existing boat ramp will be available for public use throughout all construction phases. Access to the boat ramp through the USFS-owned upland parcel will also be provided, with 6 truck/trailer parking spaces available throughout the project. Furthermore, no construction will take place from August 1 – September 30, when the site is busiest, to avoid impacting public access during the Coho salmon run.

The main office of the USFS, Chugach National Forest (differentiated from the applicant, who is the USFS Chugach National Forest, Cordova Ranger District) submitted a letter stating that they believe the project to be a generally allowed use of State land under 11 AAC 96.020 and that therefore no easement is necessary. This comment is addressed in the Management Issues section of this decision.

The DEC commented that the project is within the Zone A Drinking Water Protection Area of a Public Water System for the City of Cordova and asked that the City of Cordova be made aware of the project. The City of Cordova was notified of the proposed project on September 27, 2013 and did not object.

The DEC also recommended that the applicant adhere to the DEC Division of Environmental Health, Drinking Water Program’s “Recommendations for General Construction Projects near a Public Water System.” The referenced recommendations have been forwarded to the applicant, including DEC’s recommendation that all project data be made available to DMLW for distribution to other agencies or the general public. In keeping with this recommendation, all data collected in association with the project shall be submitted to DMLW upon request. Subject to the limitations of AS 38.05.035, AS 40.25.120 and 11 AAC 53.050, DMLW may provide these data to other public agencies and to the general public upon request.

Term

The Public Access Easement granted under ADL 225809 will be issued for an indefinite period that may be revoked for cause; if the area described is no longer used for the purpose intended; or if a
higher and better use for the project site is established as determined by the DMLW Director (as per AS 38.05.850).

The Entry Authorization (EA) issued for development of ADL 225809 will expire 3 years after the date of this decision. Extensions to the EA may be granted at the request of the applicant, if granting the extension is deemed to be appropriate by SCRO. If an extension is required, the applicant must contact SCRO no later than 30 days prior to the expiration of the EA and submit a non-refundable filing fee per 11 AAC 05.010(a)(5)(B), if applicable.

Third Party Interests
No third party interests are affected by the proposed authorization.

Management Issues

• **Bank Stabilization**
  The bank stabilization component of the Eyak River Boating Site project is a Generally Allowed Use (GAU) of State land. According to 11 AAC 96.020 the placement of up to one cubic yard of bank stabilization material per running foot of shoreline, to prevent erosion of a contiguous upland parcel, does not require a permit as long as the placement is within the scope of the United States Army Corps of Engineers (USACE) Nationwide Permit 13. The USFS is required to notify SCRO of any changes to the bank stabilization plan and the SCRO Regional Manager shall have the discretion to determine if additional authorizations are required.

• **Written Authorization is Required for Public Boat Ramps**
  During the adjudication process, the USFS submitted a letter saying their understanding is “that written authorization is no longer needed, since this type of project is a generally allowed use under 11 AAC 96.020.” The Alaska Administrative Code says, in part:

  **11 AAC 96.020 (a)** “A permit or other written authorization is required for uses and activities not appearing on the list in this subsection... the following land uses and activities, alone or in combination, are generally allowed uses on state-owned public domain land without any permit or other written authorization from the department...”

  **11 AAC 96.020 (a)(2)(B)** “anchoring a mooring buoy in a lake, river, or marine waters, or placing a float, dock, boat haulout, floating breakwater, or boathouse in a lake, river, or marine waters, for the personal, noncommercial use of the upland owner...”

  **11 AAC 96.020 (a)(2)(B)(ii)** “‘boat haulout’ means either a rail system, at ground level or elevated with pilings, or a line attached from the uplands to an anchor or mooring buoy”

  SCRO does not consider the Eyak River Boat Ramp to be GAU for two reasons. First, a boat ramp consisting of infrastructure installed on the bed of a navigable waterway is not a “boat haulout” as described by 11 AAC 96.020 (a)(2)(B)(ii) and does not fall under any other activity which is described as a GAU. Second, the uses described in 11 AAC 96.020 (a)(2)(B) must be for the “personal, noncommercial use of the upland owner.” Although the USFS are the upland owners at this site, the boat ramp is for public, not personal, use, and therefore is not considered a GAU of State Land.

  Furthermore, even if the installation of a public boat ramp were generally allowed, the limitation on commercial use of a facility installed under 11 AAC 96.020 (a)(2)(B) means that commercial
entities would be prevented from using the boat ramp. This would include fishing, hunting or recreational (e.g. kayak) guides, who would otherwise be able to use this site as the only public boat launching access to the Eyak River. USFS has not indicated that they wish to restrict such commercial uses, or demonstrated that such a restriction would be in the best interest of the State.

In consideration of these facts, the nature of the proposed improvements and the proposed uses thereof, SCRO does not consider the proposed project to be a Generally Allowed Use of State land as described in 11 AAC 96.020. Therefore a written authorization is required to allow the installation and operation of the Eyak River Boat Ramp.

Environmental Considerations

SCRO considered several environmental factors as they relate to determining performance guaranty requirements for ADL 225809. In accordance with 11 AAC 96.060(b), these factors are considered in light of the potential cost of site restoration. Environmental factors not related to site restoration may be discussed elsewhere in this decision or be addressed by the appropriate permitting agencies. Other agencies’ review and permitting processes are outside the scope of SCRO’s authority and are not addressed by this decision.

The primary environmental risk created by authorization of ADL 225809 is an impact to anadromous fish during the construction phase of the project. The applicant has consulted with ADF&G regarding the proposed project and shall be required to secure and comply with any permits deemed necessary by ADF&G. Due to the participation of ADF&G no additional performance guaranty is needed by DMLW to address this issue.

Economic Benefit & Development of State Resources

In accordance with AS 38.05.850, the SCRO considered three criteria to determine if this project provided the greatest economic benefit for the State and the development of its natural resources. These included direct economic benefit to the State, indirect economic benefit to the State, and encouragement of development of the State’s resources.

The proposed project presents an indirect benefit to the State of Alaska by enhancing fishing, hunting and recreation activities in the Cordova area. The project also encourages the development of the State’s resources by enhancing public access to the Eyak River. Because there are no competing projects which are incompatible with ADL 225809, and in consideration of the economic benefits versus the risk associated with the project, DNR finds granting of the proposed easement provides the greatest economic benefit to the State.

Other Authorizations

There are no related DMLW authorizations required for the proposed project. The USFS is responsible for obtaining and complying with all other agencies’ required authorizations in association with the Eyak River Boat Ramp project. The failure to obtain or comply with said authorizations shall constitute a violation of ADL 225809 and may be subject to action by DMLW.

Survey

A DNR approved as-built survey is required for ADL 225809 to determine the proper location and compute accurate acreage of improvements proposed for installation on DMLW-managed State lands. The applicant may be required to submit an Application for Survey Instructions to the DNR Cadastral Survey Unit (Survey Section) along with the survey instruction fee of $225 as per 11 AAC
Survey Instructions for ADL 225809 will be provided to the applicant upon receipt of the application and fee. Advance planning facilitates the survey process, saving time and money for both the State and the applicant. Therefore, SCRO strongly recommends coordination with the Survey Section prior to beginning construction on State land.

A draft of the project as-built drawings must be submitted to the Survey Section prior to expiration of any Entry Authorization (EA) issued by SCRO for ADL 225809, and must be approved of by SCRO before issuance of the final easement document.

**Fees**

Per 11 AAC 05.010(c) and in accordance with DNR Department Order 145, land use fees associated with the issuance of an EA and a public easement are waived since the easement is in the public interest and the applicant is a federal agency with whom the DNR has a reciprocal agreement to waive fees.

**History of Compliance**

DNR records indicate that the applicant is in compliance with the terms of other DMLW-issued authorizations.

**Performance Guaranty**

In consideration of the low risk to the State posed by the requested authorization and the applicant’s history of compliance with authorizations issued by DMLW, the requirement of a Performance Guaranty described under 11 AAC 96.060 is waived for ADL 225809. DMLW reserves the right to require a performance guaranty during the term of any authorization granted under ADL 225809. If required, a performance guaranty in an amount acceptable to DMLW must be provided and remain in place during the term of the authorization. The guaranty may be adjusted to reflect updates and changes in the associated project. The guaranty assures compliance with the terms and conditions of the authorization. The guaranty may be utilized by the DMLW, at the discretion of the Regional Manager, to cover costs incurred by the State to pay for any necessary corrective action(s) in the event that the USFS does not comply with site utilization and restoration guidelines.

**Insurance**

The USFS is a federal agency and is covered by the self-insurance of the United States government. Federal self-insurance meets the requirement of insurance described under 11 AAC 96.065.

In accordance with 11 AAC 96.065, USFS shall submit proof of insurance for all contractors involved in the project in order to protect the State of Alaska and its employees from all risks associated with the planned activities. USFS is responsible for ensuring that contractors maintain the insurance necessary during the term of the EA, construction, and survey activities. Even though USFS is a self insured federal agency, each contractor working on USFS’s behalf shall provide a Certificate of Insurance listing the State of Alaska, Department of Natural Resources as additionally-named insured on the policy, and it shall be submitted to the Division of Mining, Land and Water prior to entry onto State-owned land for usages which are not generally allowed under 11 AAC 96.020.

**Proposal & Recommendation for Issuance of Entry Authorization**

I recommend granting an Entry Authorization (EA) to the USFS for a term of three years for the purpose of constructing and locating a public access boat ramp as described herein. The boat ramp is to
be approximately 30 feet in width and 100 feet in length, surrounded on all sides by an additional 10 feet of cobble armoring and occupying approximately 0.17 acres of State-owned submerged lands. An additional area of the same dimensions, centered on the existing boat ramp, will also be authorized to allow the USFS to remove the existing ramp after it has been replaced. Therefore the Entry Authorization (EA; described below) for ADL 225809 will consist of two discontinuous areas, each approximately 60 feet in width and 120 feet in length, occupying a total of less than one acre of State-owned submerged land. In accordance with 11 AAC 05.010(c) and DNR Department Order 145, land use fees are waived for the EA issued under ADL 225809. A finalized easement will not be granted until the applicant has conformed to all terms and conditions of this decision and the EA.

Proposal & Recommendation for Issuance of Public Access Easement

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. Therefore I recommend issuance of a Public Access Easement pursuant to AS 38.05.850 to the USFS upon satisfactory completion of the project in conformance with all terms and conditions of this decision and the EA. In accordance with 11 AAC 05.010(c) and DNR Department Order 145, land use fees are waived for the Public Access Easement issued under ADL 225809. The easement will be issued for an indefinite term which may be terminated if a higher and better economic use for the project is established as determined by the DMLW Director (AS 38.05.850), if the land is no longer used for the above stated purpose or for non-compliance with the terms identified in relevant Departmental authorizations issued in association with the requested land use approval.

If issued, the easement will be approximately 60 feet in width and 120 feet in length, occupying approximately 0.17 acres of State-owned submerged land. It will authorize the USFS to operate and maintain a public access boat ramp as part the Eyak River Boating Site outside of Cordova, AK. The USFS will be responsible for the construction and maintenance associated with ADL 225809, and shall notify DMLW of any additional construction or improvements associated with this project on State-owned lands. Such construction and/or improvements may also require additional authorizations from DMLW.

Within 30 days following issuance of this easement, the USFS shall pay the appropriate recording fee as determined based on current statute to have the document recorded by DMLW.

Signature Page Follows
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, SCRO has determined that the authorizations to be granted under ADL 225809 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. SCRO will issue a Public Access Easement, pursuant to AS 38.05.850, once the applicant has conformed to all terms and conditions of this decision and the EA.

Region Manager
Southcentral Region
Division of Mining, Land and Water

Appeal Process
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(c) and (d). Appeals should be mailed or delivered to Joseph R. Balash, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, AK 99501, faxed to (907) 269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. If no appeal is filed by that date, this decision goes into effect as a final order and decision on the 31st day after “issuance.” An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.