

City and Borough of Juneau
ADL 107597
FINAL DECISION UNDER AS 38.05.850

Summary of Public Comment:

- No public comments received.
 Public comments received; see Attachment 1.

Modifications to Decision:

- Decision is not modified.
 Decision is modified as specified in Attachment 2.

Approval:

The finding presented above has been reviewed and considered. The casefile has been found to be complete and the requirements of all applicable statutes have been satisfied. It is the finding of the Regional Manager that it is in the best interest of the State to proceed with this authorization under the authority of AS 38.05.850.

- AFFIRMED AS PROPOSED.
 MODIFIED AND AFFIRMED.



David L. Kelley
Southeast Regional Manager



Date

A person affected by this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received by MAY 12, 2009 and may be mailed or delivered to Tom Irwin, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501-3561; faxed to 1-907-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. This decision takes effect immediately. If no appeal is filed by the appeal deadline, this decision becomes a final administrative order and decision of the department 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.

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

**Proposed Decision to Grant Easement under AS 38.05.850
Juneau International Airport
ADL 107597**

Proposed Action: The Division of Mining, Land and Water, Southeast Region (DMLW) proposes to grant a public easement on State lands to the Juneau International Airport for an aviation easement. The purpose is to ensure protection and control of the airspace for the approaches to runways 08 and 26. The easements are located in the Mendenhall Wetlands State Game Refuge as shown on Attachment A.

The proposed easement area consists of four irregularly shaped parcels. Parcels 1 and 2, containing about 84.06 acres and 218.71 acres respectively, were previously permitted under avigational easement casefile ADL 75780. Two new parcels, Parcels 3 and 4, contain about 285.75 acres and 38.68 acres respectively. The total proposed easement area comprises approximately 627.2 acres. The final acreage will be determined by an easement diagram. There are no improvements associated with this easement.

Legal Description: Parcels are located within the Mendenhall Wetlands State Game Refuge. Parcels 1 and 2 have portions of their boundaries common to Alaska Tideland Survey (ATS) 716. Parcel 3 has a portion of its boundary common to United States Survey (USS) 1287 and USS 3846. Lots 4 and 5 of USS 4573 lie within the boundaries of Parcel 4.

Runway 08:

Parcels 1 and 4 - Section 36, Township 40 South, Range 65 East, Copper River Meridian.

Runway 26:

Parcel 2 – Section 32, Township 40 South, Range 66 East, Copper River Meridian;
Sections 1 and 2, Township 41 South, Range 66 East, Copper River Meridian.

Parcel 3 – Section 33, Township 40 South, Range 66 East, Copper River Meridian;
Section 1, Township 41 South, Range 66 East, Copper River Meridian;
Section 6, Township 41 South, Range 67 East, Copper River Meridian.

Legal Authority: AS 38.05.850, AS 38.05.035, 11 AAC 05.010.

Administrative Record: ADL 107597, the Juneau State Land Plan, adopted December 1993, and ADL 75780.

Title: The State received title to tide and submerged lands existing at the time of statehood under the Alaska Statehood Act (Public Law 85-508), the Submerged Lands Act (67 Stat. 29, 43 U.S.C. §1301 et seq.) and the Equal Footing Doctrine. Within Parcel 2 the State received title to the uplands (Lot 12 of USS 3846) under Patent 50-84-0155 and within Parcel 4 the State received title to the uplands (Lots 4 and 5 of USS 4573) under Patent 50-80-0114.

Economic Benefit and Development of State Resources: Per AS 38.05.850(a), DMLW must consider whether this project will provide direct and/or indirect economic benefits to the State, and whether it will encourage development of the State's resources. The State will benefit because the safety of flying into and out of the airport will be improved under the runway safety area expansion. Expanding the approach zone for runway 26 a distance of 7500 feet will provide protection for this approach out to a height of 150 feet and achieve an approach slope of 50:1. Expanding the approach zone for runway 8 with the addition of Parcel 4 will now cover the full approach zone to the runway and achieve an approach slope of 34:1. Improving air traffic safety for Juneau will improve access to the capitol, providing economic benefits and encouraging development of State resources.

Easement Revocability: As per AS 38.05.850, DMLW has determined this authorization to be functionally revocable. This is primarily due to the possibility, although a small one, that the airport could relocate, and if this were the case this easement would be terminated. There are no improvements to consider. Due to the revocable nature of this authorization, public notice is not required; however, public notice will be conducted as described below.

Planning and Classification: The Juneau State Land Plan identifies this area as within Region 4, Mendenhall Wetlands State Game Refuge. Alaska Statutes (AS) 16.20.020 and .034 designate and provide management intent for the refuge. AS 16.20.034(g) states that management of the surface and subsurface estate in the refuge is the responsibility of the Department of Natural Resources (DNR). In accordance with this statute, any DNR actions that affect refuge habitat will conform to the Alaska Department of Fish and Game (DFG) plan completed in March 1990. Consistent with AS 16.20.034(c), applications for permits, easements, or leases submitted after January 1, 1976 are subject to this section. The easement will be subject to this plan or any subsequent plans that are developed by DFG for the refuge.

As required by AS 16.20.034(i), management of the refuge will include provisions for expanding the Juneau International Airport, establishing additional transportation corridors, and establishing publicly owned and operated docking facilities. The DFG Mendenhall Wetlands State Game Refuge Management Plan (1990) contains the policies which guide how the City and Borough of Juneau may acquire land for these purposes.

Water Bodies: The easement area adjacent to runway 26 is located above Gastineau Channel, a public and navigable water body. The easement area adjacent to runway 8 is located above the tidally influenced area of the Mendenhall River, a public and navigable water body.

ACMP, Agency Review and Public Notice: Agency review and public notice of the project will be conducted by the Division of Coastal and Ocean Management (DCOM) under the Alaska Coastal Management Program consistency review procedures.

Agency Review: Because this easement is within the MWSGR notice will be given to DFG for comment.

Public Notice: A 30 day public notice will be conducted by DMLW. This notice will run concurrently with, and where appropriate, be incorporated into, the DCOM notice. Any comments received specific to this easement will be addressed in the final decision. At a minimum, notice will be posted to the State of Alaska Online Public Notice System and provided to the applicant.

Environmental Risk: No significant environmental risk is associated with this easement.

Survey: Prior to easement issuance, the applicant will be required to complete an easement diagram that meets DMLW standards. Because there are no improvements planned, no as-built survey is needed, and therefore no early entry permit will be issued. After all reviews are completed and DMLW has issued a final decision on the proposed action, instructions to complete the diagram will be issued to the applicant. Upon receipt and approval of the easement diagram, DMLW will issue the easement authorization.

Casefile ADL 75780, which authorized the aviation easement for Parcels 1 and 2, will be closed. The modified parcels, both of which are subject to the conveyance of portions of their respective areas to the City and Borough of Juneau (CBJ) under ADL 107380, will be combined with the new parcels (Parcels 3 and 4) and noted as two separate tracts under this authorization.

Fees, Bonding and Insurance: All fees, performance guarantee and insurance are waived due to the nature and scope of the project and benefit to the public.

Discussion: In the revised application that was submitted for this easement, several conditions were noted for incorporation into the authorization, as follows:

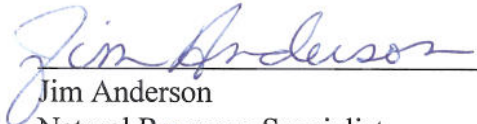
1. The erection of structures or growth of natural vegetation that would constitute an obstruction to air navigation will be prohibited on the easement area.
2. Any activity on the easement area that would interfere with or be a hazard to the flight of aircraft over the land or to and from the airport, or interfere with the air navigation and communication facilities serving the airport, will be prohibited.
3. The City and Borough of Juneau will have a right of ingress and egress to and from the land or waters of the easement area to take such steps necessary to remove any obstruction or obstructions.
4. The public right of passage through the airspace above the surface of the easement shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace.

The existing aviation easement for Parcels 1 and 2, ADL 75780, contained a condition that addressed, in part, conditions 1 through 3 above. DMLW agrees that these four conditions are appropriate to incorporate into this authorization.

Recommendation: DMLW shall grant a public easement to the Juneau International Airport authorizing the avigational easement shown on Attachment A, after the easement diagram has been approved. This easement will ensure that air traffic has safe approach and departure zones when landing at and taking off from the airport. The easement shall be granted for an indefinite term, or until the easement is no longer used for the purpose granted.

The easement shall be subject to the standard stipulations in the DNR Division of Mining, Land and Water Public Easement form, or as it is subsequently revised, and shall include the following special conditions:

1. The easement shall contain modifications and/or provisions that are justified by public comment and operational experiences.
2. The term of the easement shall be in perpetuity.
3. The easement shall be subject to the Mendenhall Wetlands State Game Refuge Management Plan, prepared March 1990, or any subsequent plan.
4. The four conditions in the Discussion section above will be incorporated into the easement.


Jim Anderson
Natural Resource Specialist

3-25-8
Date


Ed Collazzi
Regional Manager

3/25/2008
Date

PUBLIC NOTICE, DECISION AND APPEAL PROCESS:

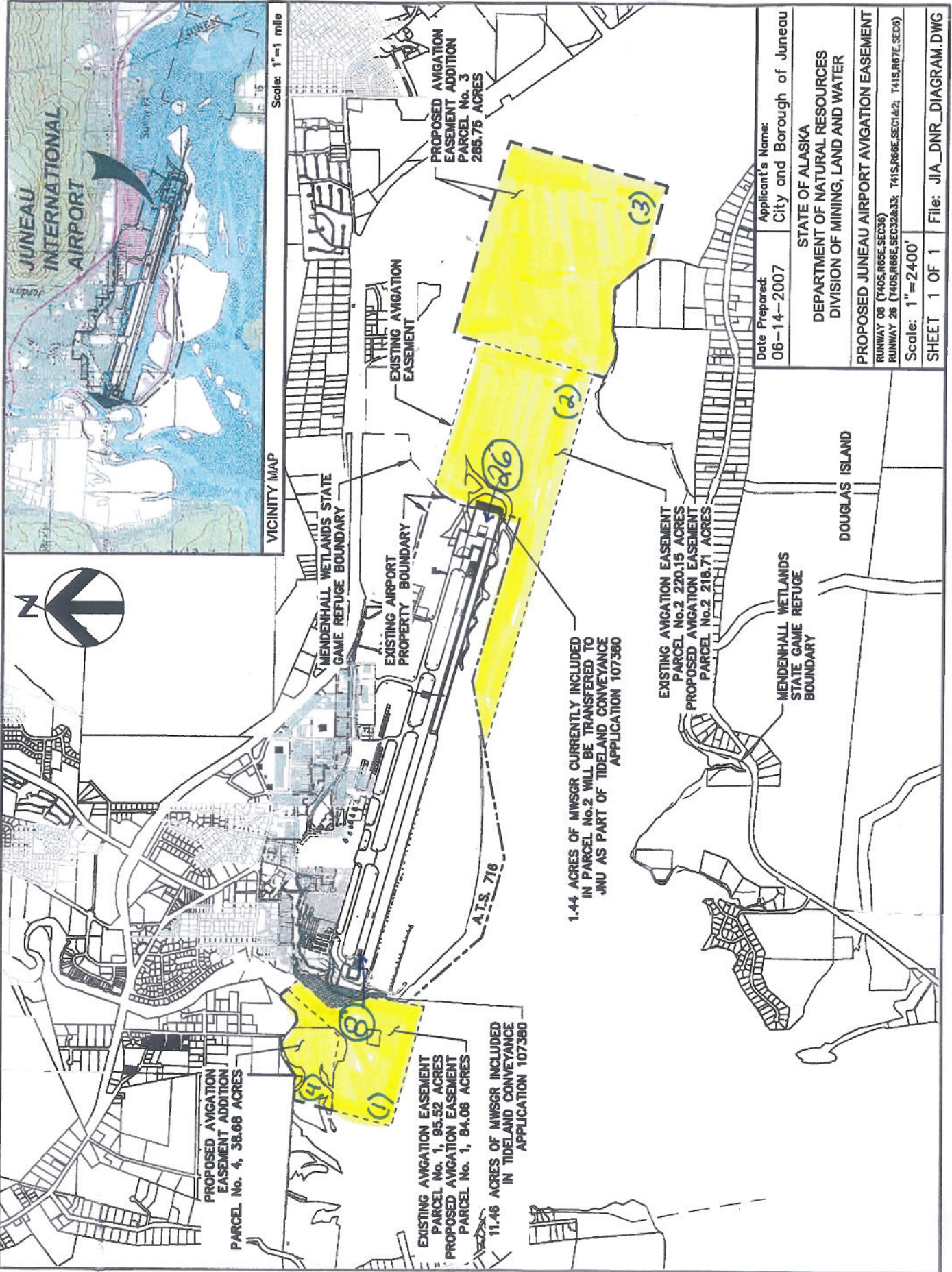
A land conveyance associated with this project, casefile ADL 107380, requires notice under AS 38.05.945, which exceeds the notice required for this easement. Notice regarding this proposed easement will be added to the notice for the land conveyance, which will meet and exceed the notice requirements for this easement.

Agency Review will be coordinated through DCOM; however, specific agency notice will be provided to DFG as manager of the MWSGR.

The public is invited to comment on the proposed action. Information on the application and standard easement conditions is available from Jim Anderson, Division of Mining, Land and Water, 400 Willoughby Ave., P.O. Box 111020, Juneau, AK 99811-1020, (907) 465-3427, or at email address jim.anderson@alaska.gov. All written comments will be considered and must be received in writing at the above mailing or email address, or by fax at 907-586-2954, by

May 5, 2008 in order to ensure consideration prior to the final action. Notice of the final action and appeal process will be sent to commenters and other interested parties if a mailing address is provided in a timely manner.

Attachments: Attachment A – Development Plan



Attachment A - ADL 107597
Easement Diagram