

E. NEW BUSINESS

3. Resolution 2022-XX: Approving the Acquisition of a Public Access Easement from the State of Alaska for Watermelon Trail.

Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Mike Navarre, Mayor *MN*
Robert Ruffner, Planning Director *RR*
Marcus Mueller, Land Management Officer *RRFMM*

FROM: Julie Denison, Land Management Technician *JD*

DATE: October 13, 2022

RE: Resolution 2022-_____, Approving the Acquisition of a Public
Access Easement from the State of Alaska for Watermelon Trail (Mayor)

Watermelon Trail is an existing multi-use public trail accessing backcountry and Kenai Peninsula Borough (Borough) lands, primarily across state and Borough lands. Across Borough lands, the trail is maintained year-round by Snomads, Inc. (Snomads) through a Community Trail Management Agreement (CTMA). Where Watermelon Trail traverses state land, Snomads has applied for an easement with the State of Alaska, with the Borough requested to become the grantee.

Borough acceptance of the trail easement from the State of Alaska would enable the Borough and Snomads to amend the CTMA Trail Management Plan to include the segments of Watermelon Trail extending across state lands.

Your consideration of the resolution is appreciated.

Introduced by:

Mayor

Date:

10/25/22

Action:

Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2022-**

**A RESOLUTION APPROVING THE ACQUISITION OF A PUBLIC ACCESS
EASEMENT FROM THE STATE OF ALASKA FOR WATERMELON TRAIL**

WHEREAS, KPB 17.10.030 and KPB 17.10.040 requires Kenai Peninsula Borough (“Borough”) Planning Commission consideration and assembly approval for the acquisition of interests in lands; and

WHEREAS, an easement is an interest in land; and

WHEREAS, the purpose of the acquisition is for construction, operation and maintenance of an existing multi-use public trail, commonly called Watermelon Trail, across State of Alaska lands on the southern Kenai Peninsula; and

WHEREAS, Snomads, Inc. has initiated the easement process through the State of Alaska, Department of Natural Resources under ADL 223843 and is also the holder of the Borough Community Trail Management Agreement for the portions of this same trail across Borough-owned lands; and

WHEREAS, Watermelon Trail is an important backcountry access point for Borough residents, including access to Borough lands; and

WHEREAS, a land classification does not fit within the intent and purpose of Borough Chapter 17.10 and the use of the easement area defined by the easement instrument; and

WHEREAS, the Borough Planning Commission, at its regularly scheduled meeting of October 24, 2022, recommended _____;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the acquisition of a public access easement described as ADL 233843 for a 60-foot-wide trail easement 55,000-feet-in-length, more or less, commonly known as Watermelon Trail is in the best interests of the Borough.

SECTION 2. The terms of the acquisition are in accordance with AS 38.05.850, public and charitable use. The duration of the easement is indefinite.

SECTION 3. The purpose of the acquisition is for construction, operation and maintenance of an existing public multi-use trail and related infrastructure commonly called Watermelon Trail.

SECTION 4. That no land classification is required pursuant to KPB 17.10.080(C). The Borough intends to administer the trail through community trail management agreement authorizations consistent with other sections of the trail on Borough-owned lands, and consistent with the terms of the easement.

SECTION 5. That the mayor is authorized to execute any and all documents necessary to acquire the interest in real property as described in this resolution in accordance with the terms and conditions contained in this resolution and accompanying Public Access easement document and consistent with applicable provisions of KPB 17.10.

SECTION 6. That this resolution is effective immediately upon adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
* 2022.**

Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:



Land Management

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2205 • (907) 714-2378 Fax

A Division of the Planning Department

Charlie Pierce
Borough Mayor

June 24, 2022

State of Alaska
Department of Natural Resources DMLW, SCRO
Attn: Evan Dodd, Easement Unit
550 West 7th Avenue, Suite 900C
Anchorage, AK 99501
(Via Email evan.dodd@alaska.gov)

RE: ADL 233843 – Watermelon Trail Easement

Dear Mr. Dodd,

The Kenai Peninsula Borough is the landowner at the Watermelon Trail Trailhead and works with the Snomads organization through a Community Trail Management Agreement as to the borough land involved along that trail. KPB Land Management has been in discussions with Snomads concurrent with the easement application for ADL 233843, pertaining to those sections of Watermelon Trail on State land. KPB Land Management has at the same time had discussions with the SOA DNR DMLW SCRO Easement Unit to evaluate whether KPB should hold the easement as grantee, to determine the scope of interests that KPB would hold under this easement, and to design the easement such that KPB would have a managing interest, permitting, and regulatory authority within the scope of the easement purpose. The contemplated easement would then allow KPB to permit development, use, and maintenance within the purpose and scope of the easement, subject to plan review by the DMLW; for example KPB could extend the Snomads Community Trail Management Agreement to the ADL 233843 area.

With this understanding, and subject to approval of the KPB Assembly pursuant to KPB 17.10.040 and acceptance by the KPB Mayor, I hereby request that ADL 233843 Watermelon Trail Easement be granted with Kenai Peninsula Borough named as Grantee.

ADL 233843 – Easement Request

Upon receiving a draft easement, a resolution will be prepared for Planning Commission recommendation and Assembly Approval which may take 45-60 days.

We appreciate SCRO's work to solidify the Watermelon Trail within the Kenai Peninsula Borough to provide appropriate management tools.

Respectfully,



Marcus A. Mueller
Land Management Officer

CC: Robert Ruffner, KPB Planning Director
Charlie Pierce, KPB Mayor

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

ADL 233843
Public Access Easement
Kenai Peninsula Borough

This easement is granted this XXth day of MONTH, YEAR, by the State of Alaska, acting by and through the Department of Natural Resources, Division of Mining, Land and Water, whose address is 550 West 7th Avenue, Suite 900C, Anchorage, AK 99501, hereinafter referred to as the Grantor. This easement is granted to the Kenai Peninsula Borough, whose address is 144 North Binkley Street, Soldotna, AK 99669, hereinafter referred to as the Grantee.

In accordance with the provisions of AS 38.05.850, and the rules and regulations promulgated thereunder, a public access easement is hereby granted for an indefinite term for the construction, operation, and maintenance of an existing public multi-use trail and related infrastructure. This easement is located near Homer, AK, over and across the following described state lands:

Within applicable portions of Sections 10, 11, 15, 21, 22, 28, and 29, Township 4 South, Range 12 West, Seward Meridian, Sections 2, 3, 10, 15, 16, and 22, Township 5 South, Range 13 West, Seward Meridian, in the Homer Recording District. The easement is XXXX feet in length and XX feet in width for a total of XX.XX acres, more or less. The easement is depicted As-Built Survey EPF XXXXXX, recorded concurrently as Plat # _____, Homer Recording District.

This easement is subject to the terms and conditions contained herein.

In the event that this easement shall in any manner conflict with or overlap a previously granted easement or right-of-way, the Grantee shall use this easement in a manner that will not interfere with the peaceful use and enjoyment of the previously issued easement or right-of-way. The Grantor reserves the right to set or modify stipulations governing the use of the conflicting or overlapping area.

Any lands included in this easement that are conveyed from state ownership shall be subject to this easement.

This easement shall terminate at the end of the stated term, if any, when the Grantor determines that the easement is no longer in use for the purpose(s) authorized, or the easement is revoked as a result of violation of the terms and conditions contained herein. The State of Alaska shall be forever wholly absolved from any liability for damages that might result if this easement is terminated for any reason.

Now therefore, in accordance with the conditions of this easement including all attachments and documents that are incorporated by reference, the Grantee is authorized to operate and maintain said easement over and across lands herein described. In witness whereof, the Grantor and the Grantee have affixed their signatures on the date(s) specified herein.

[SIGNATURE PAGES FOLLOW]

GRANTOR

Samantha Carroll, Natural Resource Manager 3
Southcentral Regional Land Office, Division of Mining, Land and Water

STATE OF ALASKA)
) ss
____ Judicial District)

THIS IS TO CERTIFY THAT ON THIS ____ day of _____, 20____, before me personally appeared _____ known by me to be the person named in and who executed said document and acknowledged voluntarily signing the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public in and for the State of Alaska
My commission expires with office

GRANTEE

Charlie Pierce, Mayor
Kenai Peninsula Borough

STATE OF ALASKA)
) ss
____ Judicial District)

THIS IS TO CERTIFY THAT ON THIS ____ day of _____, 20____, before me personally appeared _____ known by me to be the person named in and who executed said document and acknowledged voluntarily signing the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public in and for the State of Alaska
My commission expires: _____

WHEN RECORDED, RETURN DOCUMENT TO:
Department of Natural Resources
Division of Mining, Land and Water
550 West 7th Avenue, Suite 900C
Anchorage, AK 99501

Stipulations:

1. **Authorized Officer:** The Authorized Officer (AO) for the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), is the Regional Manager or designee.
2. **Change of Contact Information:** The Grantee shall maintain current contact information with the AO. Any change of contact information must be submitted in writing to the AO.
3. **Proper Location:** This authorization is for activities on state lands or interests managed by DMLW. It does not authorize any activities on private, federal, native, and municipal lands, or lands which are owned or solely managed by other offices and agencies of the State. The Grantee is responsible for proper location within the authorized area.
4. **Development Plan:** Development shall be limited to the authorized area, improvements, and maintenance activities specified in the approved development plan or subsequent modifications approved by the AO. The Grantee is responsible for accurately siting development and operations within the authorized area. Any proposed revisions to the development plan must be approved in writing by the AO before the change in use or development occurs.
5. **Directives:** Directives may be issued for corrective actions that are required to correct a deviation from design criteria, project specifications, stipulations, State statutes or regulations. Work at the area subject to the Directive may continue while implementing the corrective action. Corrective action may include halting or avoiding specific conduct, implementing alternative measures, repairing any damage to state resources that may have resulted from the conduct, or other action as determined by DNR.
6. **Violations:** This authorization may be revoked upon violation of any of its terms, conditions, stipulations, nonpayment of fees, or upon failure to comply with any other applicable laws, statutes and regulations. A revocation may not become effective until 60 days after the Grantee has been notified in writing of the violation during which time the Grantee has an opportunity to cure any such violation.

No public access easement may be terminated without the prior written approval of DMLW.

7. **Public Access:** The construction, operation, use, and maintenance of the authorized area shall not interfere with public use of roads, trails, waters, landing areas, and public access easements. The ability to use or access state land or public waters may not be restricted in any manner. However, if a specific activity poses a safety concern, the AO may allow the restriction of public access for a specific period of time. The Grantee is required to contact the AO in advance for approval. No restriction is allowed unless specifically authorized in writing by the AO.
8. **Public Trust Doctrine:** The Public Trust Doctrine guarantees public access to, and the public right to use, navigable and public waters and the land beneath them for navigation, commerce, fishing, and other purposes. This authorization is subject to the principles of the Public Trust

Doctrine regarding navigable or public waters. The AO reserves the right to grant other interests consistent with the Public Trust Doctrine.

- 9. Valid Existing Rights:** This authorization is subject to all valid existing rights and reservations in and to the authorized area. The State makes no representations or warranties, whatsoever, either expressed or implied, as to the existence, number, or nature of such valid existing rights.
- 10. Site Maintenance:** The authorized area shall be maintained in a neat, clean, and safe condition, free of any solid waste, debris, or litter, except as specifically authorized herein. Nothing may be stored that would be an attractive nuisance to wildlife or create a potentially hazardous situation.
- 11. Maintenance of Improvements:** The Grantor is not responsible for maintenance of authorized improvements or liable for injuries or damages related to those improvements. No action or inaction of the Grantor is to be construed as assumption of responsibility.
- 12. Removal of Improvements and Site Restoration:** Upon termination of this authorization, whether by abandonment, revocation or any other means, the Grantee shall within 30 days remove all improvements from the area herein granted, except those owned by the State, and the site shall be restored to a condition acceptable to the AO. Should the Grantee fail or refuse to remove said structures or improvements within the time allotted, they shall revert to and become the property of the State; however, the Grantee shall not be relieved of the cost of the removal of the structures, improvements and/or the cost of restoring the area
- 13. Amendment or Modification:** The Grantee may request an amendment or modification of this authorization; the Grantee's request must be in writing. Any amendment or modification must be approved by the AO in advance and may require additional fees and changes to the terms of this authorization.
- 14. Assignment:** In the event the grantee desires to transfer their interest in this authorization to another party the grantee shall submit in writing to the AO a request for assignment. The grantor reserves the right to modify and/or add stipulations for the authorization prior to approving the assignment. The grantor reserves the right to require an assignment between the grantee and another party in the event of a change in corporate ownership, LLC/LLP membership or name change. Notwithstanding other requirements described in this authorization, assignments shall be restricted to those entities that are also eligible to obtain an authorization under the same statutory authority in which this authorization was issued.
- 15. Request for Information:** The AO, at any time, may require the Grantee to provide any information directly or indirectly related to this authorization, in a manner prescribed by the AO.
- 16. Inspections:** The AO shall have reasonable access to the authorized area for inspection, which may be conducted without prior notice. If the Grantee is found to be in noncompliance the authorized area may be subject to reinspection. The Grantee may be charged for actual expenses of any inspection.

- 17. Waste Disposal:** On-site refuse disposal is prohibited, unless specifically authorized. All waste generated during operation, maintenance, and termination activities under this authorization shall be removed and disposed of at an off-site DEC approved disposal facility. Waste, in this paragraph, means all discarded matter, including but not limited to human waste, trash, garbage, refuse, oil drums, petroleum products, ashes and discarded equipment.
- 18. Operation of Vehicles:** Vehicles shall be operated without disturbing the vegetative mat and underlying substrate.
- 19. Surface Drainage:** Adequate culverts shall be installed to maintain surface drainage and to prevent ponding and/or erosion.
- 20. Site Disturbance:**
- Site disturbance shall be kept to a minimum to protect local habitats. All activities at the site shall be conducted in a manner that will minimize the disturbance of soil and vegetation and changes in the character of natural drainage systems.
 - Brush clearing is allowed, but shall be kept to the minimum necessary to conduct or complete the authorized activity. Removal or destruction of the vegetative mat outside of the authorized area is not allowed.
 - The Grantee shall conduct all operations in a manner which will prevent unwarranted pollution, erosion, and siltation. Any pollution, erosion, or siltation shall be repaired/remediated in a manner and time frame satisfactory to the AO at the Grantee's expense.
- 21. Ground Disturbance and Repair:** Grantee will refill holes, trenches and surface depressions resulting from development or maintenance activities with sand, gravel, native materials, or a substitute approved by the AO. Surface areas will be recontoured to the satisfaction of the AO so that they do not pose a threat to human safety or wildlife transit.
- 22. Destruction of Markers:** The Grantee shall protect all survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, and unsurveyed corner posts against damage, destruction, or obliteration. The Grantee shall notify the AO of any damaged, destroyed, or obliterated markers and shall reestablish the markers at the Grantee's expense in accordance with accepted survey practices of the DMLW.
- 23. Fuel and Hazardous Substances:**
- No fuel or hazardous substances are to be stored on state land. Prior written approval from the AO is required for a change in this restriction and may include additional stipulations and/or a change in the amount required for the performance guaranty.
 - Signs: Trail signs may be posted within the easement corridor only. Flexible signposts shall be used.
- 24. Performance Guaranty:** The requirement of a performance guaranty for this authorization is met by the self-bonding of the Grantee, who is a state agency. The provisions of this authorization shall not prejudice the State's right to obtain remedy under any law or regulation.

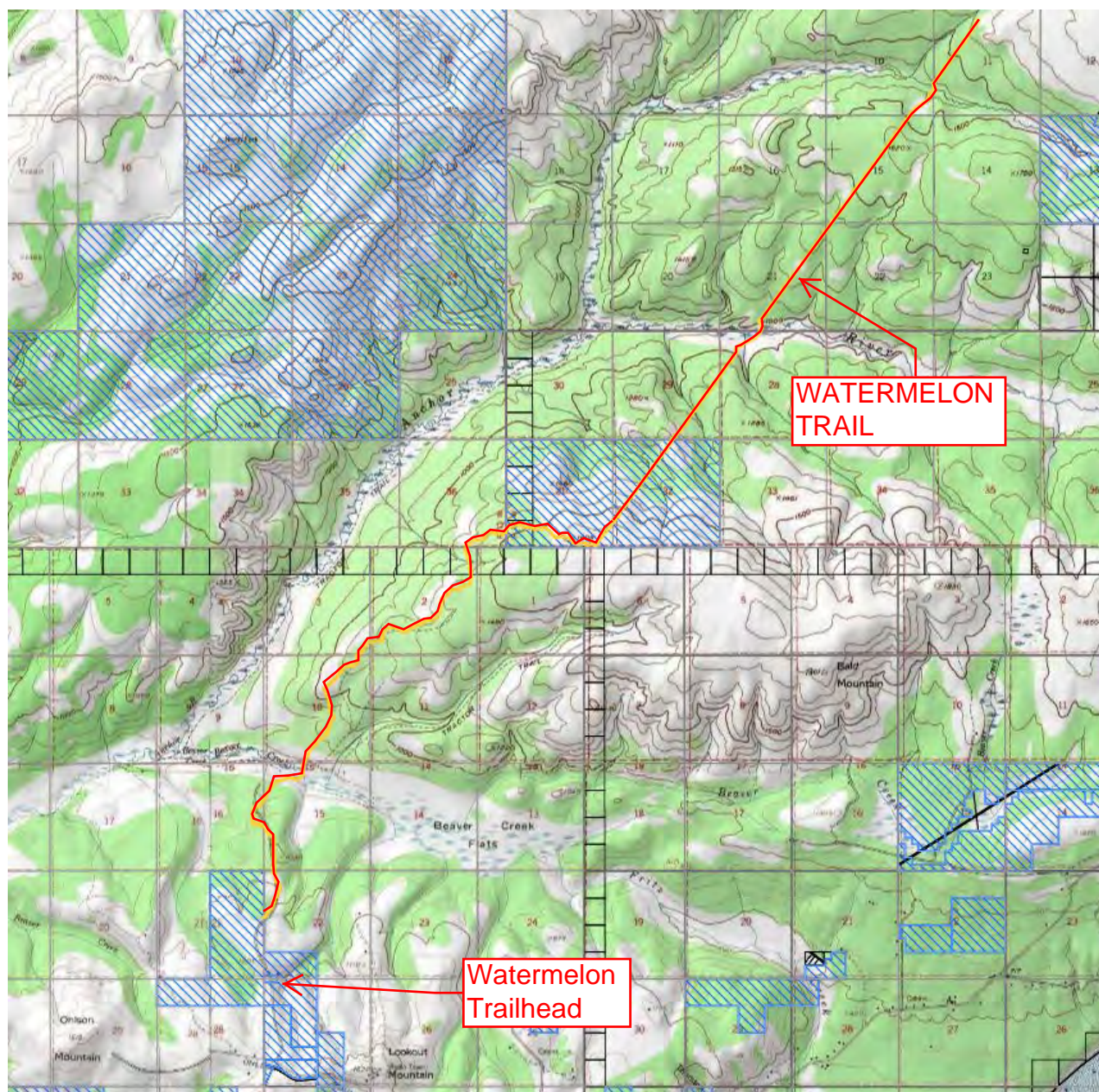
- 25. Incurred Expenses:** The Grantor shall in no way be held liable for expenses incurred by the Grantee connected with the activities directly or indirectly related to this authorization.
- 26. In Lieu of Indemnification:** In connection with the entry on or use of assigned lands, subject to the limitations and provisions of AS 09.50.250-.270 and AS 37.05.170, the Grantee shall ensure that its contractors and subcontractors shall indemnify, save harmless, and defend the State, its agents and its employees from any and all claims or actions for injuries or damages sustained by any person or property arising directly or indirectly from the construction or the contractor's performance of the contract, except when the proximate cause of the injury or damage is the State's sole negligence.
- 27. Preference Right:** No preference right for subsequent authorizations is granted or implied by this authorization.
- 28. Alaska Historic Preservation Act:** The Alaska Historic Preservation Act, AS 41.35.200, prohibits the appropriation, excavation, removal, injury, or destruction of any state owned historic, prehistoric, archaeological or paleontological site without written approval from the DNR Commissioner. Should any sites be discovered, the Grantee shall cease any activities that may cause damage and immediately contact the AO and the Office of History and Archaeology in the Division of Parks and Recreation.
- 29. Compliance with Government Requirements:** The Grantee shall, at its expense, comply with all federal, state, and local laws, regulations, and ordinances directly or indirectly related to this authorization. The Grantee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.
- 30. Waiver of Forbearance:** Any failure on the part of the AO to enforce the terms of this authorization, or the waiver of any right under this authorization by the Grantee, unless in writing, shall not discharge or invalidate the authorization of such terms. No forbearance or written waiver affects the right of the AO to enforce any terms in the event of any subsequent violations of terms of this authorization.
- 31. Severability Clause:** If any clause or provision of this authorization is, in a final judicial proceeding, determined illegal, invalid, or unenforceable under present or future laws, then the Grantor and the Grantee agree that the remainder of this authorization will not be affected, and in lieu of each clause or provision of this authorization that is illegal, invalid, or unenforceable, there will be added as a part of this authorization a clause or provision as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.
- 32. Fire Prevention, Protection and Liability:** The Grantee shall take all reasonable precautions to prevent and suppress forest, structure, brush and grass fires, and shall assume full liability for any damage to state land and structures resulting from the negligent use of fire. The State is not liable for damage to the Grantee's personal property and is not responsible for forest fire protection of the Grantee's activity. To report a wildfire, call 911 or 1-800-237-3633.

33. Notification of Discharge: The Grantee shall immediately notify the Department of Environmental Conservation (DEC) and AO of any unauthorized discharge of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons on land. All fires and explosions must also be reported immediately.

If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, the Grantee shall report the discharge within 48 hours. Any discharge of oil greater than one gallon up to 10 gallons, including a cumulative discharge, solely to land, must be reported in writing on a monthly basis.

Notification of discharge during normal business hours must be made to the nearest DEC Area Response Team: Anchorage (907) 269-3063, fax (907) 269-7648; Fairbanks (907) 451-2121, fax (907) 451-2362; Juneau (907) 465-5340, fax (907) 465-5245. To report a spill outside of normal business hours, call toll free 1-800-478-9300 or international 1-907-269-0667.

Notification of discharge must be made to the appropriate DNR Office, preferably by e-mail: Anchorage email dnr.scro.spill@alaska.gov, (907) 269-8528; Fairbanks email dnr.nro.spill@alaska.gov, (907) 451-2739; Juneau email dnr.sero@alaska.gov, (907) 465-3513. The Grantee shall supply the AO with all incident reports submitted to DEC.



ADL 233843
Watermelon Trail Easement

60-Foot Wide Public Easement

Located on State land within
Township 4 South, Ranges 12
& 13 West and Township 5
South, Range 13 West





**REQUEST FOR AMENDMENT OR MODIFICATION TO
TRAIL MANAGEMENT PLAN
FOR PUBLIC TRAILS ON BOROUGH LAND
LAND MANAGEMENT DIVISION**

TRAIL MANAGER:

Organization Name: _____

Address: _____

City/State/Zip: _____ **Phone:** _____

Email: _____ **Web Address:** _____

Please anticipate a minimum of sixty (60) days to review the submittal. Amendments or modifications may be approved administratively when they are consistent in nature with the standing agreement. Major amendments or modifications require approval by the assembly.

1. Describe the purpose and location of the proposed modification or amendment, including timetable. Attach additional pages as necessary (add additional pages if needed):

2. Attach a map or other drawing depicting the location of the proposed modification or amendment. *Map attached* ☐

Per section V(B) of CTMA No. 2021-01, Amd-3 , Snomads Inc., CHS Multituse Trail System
Agreement # , *Trail Manager*

Hereby requests consideration of the proposed amendments or modifications.


David Mastolier, President, Snomads Inc.

President or Vice President Name (Print)

Id2 Master
Signature

Doug Inglis, Vice President, Snomads Inc

Secretary or Treasurer Name (Print)

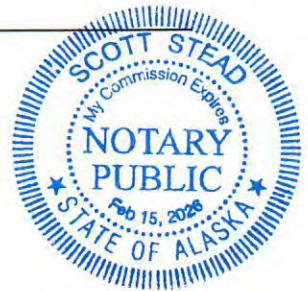

Signature

NOTARY ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 22 day of July
2022, by David Mastolier, the President of,
Name Title
an Alaska non-profit corporation, for and on behalf of the corporation.

Notary Public for State of Alaska
Commission Expires: 15 FEB 2026



STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 22 day of July 2022, by Doug Inglis, the Vice President of, an Alaska non-profit corporation, for and on behalf of the corporation.

Notary Public for State of Alaska
Commission Expires: 15 FEB 2026



CTMA 2021-01 Amendment 3, Watermelon Trail Easement Grantee (KPB)

Request, July 2022

(Amends Original CTMA 2021-01, Apr 21)

**TRAIL MANAGEMENT PLAN
FOR PUBLIC TRAILS ON BOROUGH LAND
Caribou Hills South (CHS) Trail System**

TRAIL MANAGER:

SNOMADS, Inc.

PO Box 3646

Homer AK 99603

snomads@gmail.com

www.snomadsonline.org

SUMMARY OF PROPOSED ACTIVITIES (Check All That Apply)

SEASONS OF TRAIL MANAGEMENT

☐ Winter ☐ Summer ☒ Year Round

TRAIL WIDTH (Typical)

☐ Under 5 Feet

☐ 5-10 Feet

☒ 10-20 Feet

TRAIL MAINTENANCE ACTIVITIES

☒ Periodic Brushing/Clearing

☒ Grading

☒ Snow Grooming

☒ Erosion Controls

TRAIL IMPROVEMENTS

☒ Trailheads

☒ Parking Area

☒ Loading/Unloading Area

☒ Signs

☐ Sanitation (Trash/Outhouse)

☒ Picnic Area

☒ Shelters

☒ Culverts

☒ Bridges

☐ Stairs

☒ Gates & Bollards

☒ Hardening

☒ New Trails

TRAIL ADMINISTRATION

☒ Competitions/Sponsored Events

☒ Grants

☒ Signage

☒ Equipment Storage Facilities

TRAIL ACTIVITIES

Motorized:

☒ ATV

☒ Snow Machines

Non-Motorized:

☒ Dog Sleds

☒ Skiing

☒ Snowshoeing

☒ Skijoring

☒ Sledding

☒ Hiking

☒ Biking

☒ Walking/Running

☐ Biathlon

☒ Horses

☒ Pet Friendly

☒ Other:

Water Access

☐ Landing Area

1. **Long Range Goals:** As per Agreements, Partnerships and Easements, Snomads seeks to inform KPB of its plans and intentions. KPB acceptance of this amendment will authorize DNR issuance of a Public Outdoor Recreational Easement for the Watermelon Trail to KPB, who will be listed as the Easement “Grantee” of record (co-management with DNR), and authorizes its inclusion into CTMA 2021-01 for Trail Management to Snomads for both short and long term Management/Maintenance of the Watermelon Trail: (Para 1a, 1b): DNR ADL-233843

- a. The Watermelon Trail (and its parking lot), is one of the major arterial trails providing Multiuse access to the Caribou Hills South Trail System. Snomads has applied for a Public Recreation Trail Easement for the Watermelon Trail, in its entirety, (ref: DNR ADL 233843). A goodly portion of this trail and parking lot already exists on KPB lands, managed by the KPB LMD, with Snomads as the Trail Manager (ref: CTMA 2021-01), so the KPB is already a tenant stakeholder. The Alaska DNR South Central Regional Office (SCRO) Easement Division has recently issued a preliminary or draft Easement (unsigned) and Entry Authorization (also unsigned), with the KPB listed as the ‘Grantee’ (at Snomads request) for the rest of the trail. It is our understanding that DNR requires KPB acceptance of the “KPB Grantee” status for the Trail Easement and Entry Authorization in the form of a fully executed KPB Resolution to continue their processing.

Snomads recognizes the importance of establishing a permanent legal status for trails in the form of permanent Easements, to ensure that access and the resource is available for generations to come. It is equally important to establish a viable long term management and maintenance structure and system with the legal authority to properly manage and maintain the resource. When Trail Use Permits or Easements are applied for on Public Lands, DNR requires the applicant to do the work, and pay the fees, and in the case of Easements, generally issues it to themselves (DNR) as the ‘Grantee’, on behalf of the public. It is Snomads intent to consolidate management of the numerous stakeholders that own or manage sections of the trail under the KPB, which has a viable and active management structure/system already in place (the KPB CTMA), to ease the burden of maintaining and rehabilitating this important trail. It is also important to note that an Easement Grantee should be a survivable Public Government entity, like the KPB.

- b. Construct, Install and Maintain 3 ea. Standardized Trail Bridges on the Watermelon Trail. A component of the final Easement being issued, are a requirement for 3 ea Trail Bridges at specifically identified locations along the trail. Snomads, as the Trail Manager, accepts the responsibility of funding and constructing these Trail Bridges to published standards, and has an active program to accomplish this task, in

partnership with the Homer Soil & Water Conservation District & US Fish & Wildlife. Multiagency Permitting (including Army Corps of Engineers) will be required.

Detailed Plans:

Snomads includes Site Surveys, Surveys for Record, Detailed Project Plans, Project Progress Reports, Annual Reports, Project Proposal and Proposed Amendments in its communication and interaction with the Borough. Detailed Project Plans, Status Updates, Spot and Project Completion Reports will be forwarded to KPB in a timely manner.

Plans for specific improvement including architectural or engineering designs, when

Applicable:

Snomads will contact KPB LMD for any improvements that are planned, and where applicable, will submit detailed project plans and amendment proposals to the CTMA and obtain requisite approval in the planning stages of projects.

Grant proposals, when applicable: Snomads will inform KPB LMD of all Grant Proposal Plans or Applications that directly or indirectly impact KPB lands, or this CTMA.

Attachments:

DNR ADL 233843 Regional Managers Decision

DNR ADL 233843 Draft Easement (unsigned)

DNR ADL 233843 Entry Authorization (unsigned)

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

Regional Manager's Decision

ADL 233843
Snomads, Inc.
Public Access Easement
Watermelon Trail

REQUESTED ACTION

On June 16, 2021, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Southcentral Regional Land Office (SCRO), received an application for an easement from Snomads, Inc. (Snomads; the applicant) for the existing Watermelon Trail located on State-owned, DMLW-managed uplands near Homer, Alaska. The purpose of the proposed easement is to authorize maintenance, rehabilitation and operation of the existing trail. The applicant has requested a public access easement 75,573 feet long, 60 feet wide, and approximately 104.1 acres in size. The applicant has further requested that the easement be granted to the Kenai Peninsula Borough (KPB) to hold in trust for the public, as other portions of the trail are located on KPB managed lands. An easement for the Watermelon Trail was previously requested by the Alaska Department of Fish & Game (ADF&G), serialized as ADL 229161, but was closed on August 12, 2020, per ADF&G's request.

RECOMMENDED ACTION

The request shall be modified, and this easement will be authorized as follows:

- Type of easement: Public Access Easement
- Length: Change from 75,573 feet to 55,000 feet
- Width: 60 feet
- Acreage: Change from 104.1 acres to 75.75 acres
- Term: Indefinite
- Grantee: KPB
- Use and Restriction: Use of the easement on general state lands will conform to the weight restrictions outlined in 11 AAC 96.020 with the exception of seasonal grooming and maintenance equipment unless otherwise permitted.

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. 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 2001 Kenai Area Plan, other classification references described herein, and the casefile for the application serialized by DNR as ADL 233843.

LOCATION INFORMATION

Geographic Location

The applicant has requested that DMLW authorize an easement near Homer, AK.

Meridian Township Range Section

The applicant has applied to use State-owned, DMLW-managed lands within Sections 10, 11, 15, 21, 22, 28, and 29, Township 4 South, Range 12 West, Seward Meridian, Sections 2, 3, 10, 15, 16, and 22, Township 5 South, Range 13 West, Seward Meridian.

Additionally, SCRO review indicates that the Watermelon Trail is also be located within Section 36, Township 4 South, Range 13 West, Seward Meridian. SCRO recommends these sections of land be included in the authorized area if this request is approved.

The applicant also included Sections 31 and 32 of Township 4 South, Range 12 West, Seward Meridian, and Section 27, Township 5 South, Range 13 West, Seward Meridian in their requested legal description. Further analysis indicates that Section 27 has been conveyed to the KPB, and that Sections 31 and 32 are managed by the KPB per municipal entitlement ADL 62695. After accounting for portions of the request located on lands managed by the KPB, SCRO has adjusted the legal description to more accurately reflect the 55,000 feet of trail located on state owned and managed lands.

Other Land Information

Municipality: KPB

Regional Corporation: Cook Inlet Region, Inc. (CIRI)

TITLE

The State of Alaska holds title to applicable portions of lands within Sections 10, 11, 15, 21, 22, 28, and 29, Township 4 South, Range 12 West, Seward Meridian, Section 36, Township 4 South, Range 13 West, and Sections 2, 3, 10, 15, 16 and 22, Township 5 South, Range 13 West, Seward Meridian per Patent Number 50-65-0594, Patent Number 1220722, Patent Number 1207176, Patent Number 1217411, Patent Number 122073, Supplemental Patent Number 50-66-0495 and Tentative Approval recorded as Document Number 2012-003355-0 in the Homer Recording District. The associated DNR land acquisition casefiles are GS 6, GS 76, SCH 75 and SCH 81.

THIRD PARTY INTERESTS

Known third-party interests within the proposed project area include:

- ADL 59921 –Grazing lease, reissuance adjudication ongoing, held by Viola Jerrel;
- ADL 200045 – Public utility easement issued to Homer Electric Association;
- LAS 33241 – Land use permit issued to the Homer Soil & Water Conservation District;
- LAS 33248 – Land use permit issued to ADF&G.

PLANNING & CLASSIFICATION

The proposed easement falls within the boundaries of DNR's 2001 Kenai Area Plan (the Plan; KAP), Region 7, Unit 217, Unit 266B, and Unit 290.

Unit 217 is designated as Public Recreation and Tourism – Dispersed Use, which converts to a classification of Public Recreation Land. The plan states that the unit is frequently used by snowmachines, skiers, moose hunters, and berry pickers. The plan notes that a spur of the Watermelon Trail crosses this unit and recommends reserving access for trails prior to conveyance out of state ownership. Areas classified as Public Recreation Land are to be managed to ensure continued public use of trails, including, but not limited to, hunting, snow machining, hiking, and cross-country skiing. Management guidelines located in the Trails and Access section of Chapter 2 of the Plan note that DNR should keep trails available for public use and assist in establishing local trail systems which provide access to public land and water. Trails near wetlands may be authorized if the proposed activity will not cause significant adverse impacts to fish and wildlife habitat, ecological processes and scenic vistas; though ADF&G is to be consulted to provide recommendations on easement alignments. ADF&G was given the opportunity to comment on the proposed easement and their recommendations are discussed in the Agency Review section of this document.

Unit 266B is designated as Habitat and Public Recreation and Tourism – Dispersed Use, which convert to classifications of Wildlife Habitat Land and Public Recreation Land respectively. The plan notes that Unit 266B serves as a wildlife corridor between the Anchor River Fritz Creek Critical Habitat Area (ARFCCA) and that the area is characterized by moose rutting habitat and multiple anadromous streams. Management guidelines located in the Fish and Wildlife Habitat and Harvest section of Chapter 2 of the Plan note that access to public lands and water should be ensured and that habitat loss should be mitigated. The Plan outlines DNR's management authority within critical habitat areas and notes that Special Area Permits issued by the Alaska Department of Fish and Game (ADF&G) are required, even for uses that may be generally allowed pursuant to 11 AAC 96.020. The applicant has previously been granted a Special Use Permit by ADF&G for the trail work associated with this easement request, and ADF&G has provided additional information regarding future permits which may be necessary for the activities proposed by the Snomads.

Portions of Unit 266B are located within the Caribou Hills Special Use Area (ADL 226574), which is governed by the Caribou Hills Management Plan (CHMP). The CHMP notes that the area should be managed in accordance with Generally Allowed Uses (11 AAC 96.020) associated with recreation and that the area has high public use values including hunting and snow machining. The CHMP further notes that rights-of-way should be established over heavily used trails to protect public access, though trail use restrictions may be necessary to prevent resource damage during

seasons characterized by wet ground conditions. Trail restrictions are consistent with the intent of the CHMP, and other agencies and the public will be notified of any restrictions imposed by DNR.

Unit 290 is designated as Habitat, which converts to a classification of Wildlife Habitat Land. The entire unit falls within the ARFCCHA which is governed in accordance with AS 16.20.605 and the ARFCCHA Management Plan. Per the ARFCCHA Management Plan, continued motorized and non-motorized use of existing trails and seismic lines is to be provided for, and trailheads/corridors between Ohlson Mountain Road and the ARFCCHA are to be established to accommodate public access. As with portions of Unit 266B, ADF&G Special Area Permits are required to authorize activities within the boundaries of the legislatively designated Critical Habitat Area.

Because the proposed authorization does not conflict with management guidelines outlined by the KAP, CHMP, or ARFCCHA Management Plan, and as ADF&G has issued a Special Area Permit authorizing trail work associated with this application, SCRO has determined that it is consistent with the overall management intent and goals of the relevant planning documents.

ACCESS

Functional legal access to the state land discussed herein exists via a public travelway easement granted by the KPB, recorded as Document Number 2016-001878-0 in the Homer Recording District.

Construction of the improvements described herein is contingent on the placement of related infrastructure on borough land owned and/or managed by the KPB and private owner Gwendolyn Perry. The KPB has provided DMLW with record of their support for the DMLW easement considered herein. Gwendolyn Perry has granted a public recreational easement pursuant to AS 34.17.100, recorded as Document Number 2018-000318-0 in the Homer Recording District.

PUBLIC NOTICE & AGENCY REVIEW

Public Notice Summary

Public notice of the application was conducted from September 1, 2021, to October 4, 2021. The notice was posted to the State of Alaska Online Public Notice System and was sent to the Homer, Anchor Point, Fritz Creek, and Nikolaevsk post offices for display on their notice boards. The notice was also sent to the following recipients:

- CIRI
- Homer Electric Association
- Viola Jerrel
- Gwendolyn Perry

Comments: A total of 52 comments were received during the public notice period. All of the comments received by SCRO voiced overwhelming support for the issuance of the proposed easement, with many citing the high recreational values of the area, the need for extensive trail work due to deteriorating conditions, and the long history of community engagement by the applicant.

Response: SCRO acknowledges the 52 comments received and thanks the public for their participation in the process. Individual comments are housed within the casefile for ADL 233843.

Agency Review Summary

Agency review of the application was conducted from September 1, 2021, to October 4, 2021. The notice was sent to the following recipients.

State of Alaska:

- DNR Division of Parks & Outdoor Recreation (DPOR); Permitting and the Office of History and Archeology (OHA)
- DNR DMLW; Survey Section, Land Conveyance Section, Contract Initiation and Revenue Recovery, Realty Services Section (RSS), Mining Section, and Water Section
- DNR Division of Forestry; Kenai Office
- DNR Division of Oil & Gas (DOG); State Pipeline Coordinators Section, Permitting Section, Leasing Section
- DNR Mental Health Land Trust Office
- DNR Spatial Case Information Management System
- Department of Environmental Conservation (DEC) Division of Water; Wastewater, Alaska Pollutant Discharge Elimination System Program
- DEC Division of Environmental Health; Drinking Water Program, Solid Waste Program
- DEC Division of Spill Prevention; Contaminated Sites
- ADF&G; Wildlife Conservation, Access Defense Program
- Department of Commerce, Community and Economic Development, Division of Community and Regional Affairs
- Department of Transportation and Public Facilities; Statewide Right-of-Way
- Homer Soil and Water Conservation District (HS&WCD)

Federal

- United States Army Corps of Engineers

Local

- Kenai Peninsula Borough; Land Management Division
- Kenai River Center

Agency Review Comment & Response

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

Comment: On September 1, 2021, the DMLW Land Conveyances Section provided a statement of non-objection in regard to the proposed public access easement.

Response: SCRO acknowledges the comment.

Comment: On September 2, 2021, DMLW RSS commented to note that three sections of land included in the application were under management by KPB.

Response: SCRO appreciates the comment and has subsequently excluded Section 27, Township 5 South, Range 13 West, Seward Meridian, and Sections 31 and 32, Township 4 South, Range 12 West, Seward Meridian, from this decision as KPB is the managing authority. KPB has provided agreements made with the applicant for the portions of the trails within these sections.

Comment: On September 3, 2021, ADF&G Habitat Section commented to note that an existing Special Area Permit (21-V-0128-SA) had been issued to the Snomads for work along the Watermelon Trail within the ARFCCHA and noted that a second Special Area Permit was anticipated at a later date for portions of the project northeast of the Anchor River. ADF&G had no additional comments or objections to the proposed easement.

Response: SCRO acknowledges the response and thanks ADF&G Habitat for copies of permits issued within the CHA

Comment: On September 24, 2021, DPOR OHA commented that there are no reported cultural resource sites within the project area but noted that the applicant should notify OHA if any cultural resources are discovered during construction.

Response: SCRO acknowledges the response.

Comment: On September 28, 2021, DOT&PF Statewide Right-of-Way stated that they have no comments concerning the project.

Response: SCRO acknowledges the response.

Comment: On October 4, 2021, ADF&G Access Defense Program stated that a portion of the proposed easement crosses through the ARFCCHA which is managed by ADF&G. ADF&G has previously issued a Special Area Permit (21-V-0128-SA) but notes that an additional Special Area Permit will be required for placement of bridges over Beaver Creek proposed by the applicant. ADF&G further noted that while they support the applicant's desire to have the proposed easement held by a government agency, that it would prefer that an easement over State lands be held by DMLW. Finally, ADF&G notes that they hold management authority over lands within the CHA that the proposed easement crosses, as well as any activities below ordinary high water or crossings of anadromous water bodies.

Response: SCRO acknowledges the response. While SCRO acknowledges ADF&G's desire to have the easement held by DMLW, access to and along the route requested by the Snomads would require passage through two large segments of KPB-managed land, with all public parking occurring at the trailhead located on KPB land. Management of the trailhead would likely present the greatest influence over public use of the trail as informative signage and future expansion efforts by the KPB would directly impact the behavior and volume of various user groups. Additionally, if the proposed easement were to be held by DMLW, users would pass through four transition points along the trail where the management of the trail may change. Alternatively, granting the authorization to KPB would only require two transitions between management where the trail enters and exits the ARFCCHA. Minimizing the number of managing entities and regulations such as weight restrictions, reduces public confusion over which regulations apply where, and increases overall compliance. As the public would enjoy the same rights of access and assurances of long-term protection of the trail regardless if the easement is held by KPB or

DMLW, SCRO has determined that KPB would be the more appropriate entity to hold the easement.

SCRO understands that the ARFCCHA (legislatively designated by AS 16.20.500) is governed by the ARFCCHA Management Plan pursuant to 5 AAC 95.600. Per the ARFCCHA Management Plan, DNR authorization is required for any use, lease, or disposal of resources on state land within the critical habitat area. As co-management of state resources within the CHA is required by the ARFCCHA Management Plan, SCRO and ADF&G will consult regarding any management issues that may arise concerning impacts of, and user conflicts within, the proposed Watermelon Trail easement within the CHA.

Comment: On October 13, 2021 the HS&WCD commented to suggest that the hardened trail width proposed by the Snomads be increased from the requested five feet to six feet, to be consistent with trail hardening previously conducted by the HS&WCD. Additionally, HS&WCD requested that the specifications for U.S. Forest Service (USFS) Tier Three be listed in any granting document as they were unavailable online.

Response: SCRO will encourage the Snomads to consider increasing the hardened surface width from 5 feet to 6 feet, but will not require this change as it may impact other existing permits and may be constrained by funding limitations.

A public access easement as currently requested would authorize the Snomads to construct a hardened trail at a width suggested by the HS&WCD if desirable. As the Snomads have incorporated the USFS design standards into their development plan, no additional action is required by SCRO to require such standards. Specifications for USFS trail design is located within the casefile for ADL 233843 and can be provided to HS&WCD for reference.

No other comments were received.

ENVIRONMENTAL CONSIDERATIONS

Environmental contamination risk associated with this proposed easement is minimal. SCRO recommends that fuel, lubricants, and other hazardous materials be restricted to those necessary and be contained within tools and vehicles when equipment is necessary for construction and maintenance activities. SCRO further recommends that 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

In accordance with AS 38.05.850, DMLW considers if the requested authorization will provide the greatest economic benefit to the State and development of its natural resources. Specifically, SCRO assesses both direct and indirect economic benefits and whether the proposed authorization encourages the development of the State's resources. The proposed easement facilitates the expansion of public recreational resources, thus providing an indirect benefit to the state. In consideration of these factors, and because there are no competing requests for authorization, SCRO advises that approval of this easement will provide the greatest economic benefit to the State.

DISCUSSION

SCRO has revised the applicant's estimate of the length of the requested easement based on the erroneous inclusion of lands managed by the KPB, as confirmed by the KPB Land Management Division on December 3, 2021. In light of this revision, SCRO recommends the issuance of an easement approximately 55,000 feet long by 60 feet wide for an estimated total area of 75.75 acres in order to facilitate and protect public access along the existing Watermelon Trail and provide adequate space for trail hardening and maintenance activities.

SCRO recommends that the authorization considered herein be a public access easement granted to KPB on behalf of the public as the easement provides access to both State and Borough lands noted to yield significant public recreation opportunities, and as management of the trailhead and public parking will occur on KPB lands. Grant of a public access easement to KPB is not in any way intended to diminish DMLW or ADF&G's role in the co-management structure of the ARFCCHA.

SCRO further recommends that the easement considered herein be granted for an indefinite term from the effective date of this decision as the need for this easement can be expected to exist as long as the adjoining land requires access.

In evaluation of the applicant's request, SCRO has identified the following management issues:

Winter Route:

The applicant has proposed to create a spur route of the Watermelon Trail for winter use, which would create a 0.94-mile deviation from the existing trail. While the applicant notes that the winter route would require no construction and little to no clearing, an easement will be required to provide long term protection of the trail and to authorize grooming equipment with a curb weight in excess of Generally Allowed Uses, pursuant to 11 AAC 96.020. SCRO recommends that the winter route be included in the grant of a public access easement to ensure consistent management of the trail and reduce the number of additional authorizations required for seasonal grooming.

Installation of Bridges:

The applicant has proposed to construct two bridges over portions of the Anchor River to allow for trail grooming while mitigating erosion and damage to anadromous waters. While the proposed bridges would serve to address environmental and habitat concerns, they may present a hazard to the public in the long-term if not properly inspected and maintained. As such, SCRO recommends that the grantee be required to submit post-construction designs which have been reviewed and approved by a Registered Professional Engineer (RPE) prior to issuance of a final easement by DMLW. The plans must include the load rating and estimated life of the bridge, and load limits must be clearly posted on either side of the bridge for public awareness. After final construction of the two bridges, the grantee would be required to submit an inspection report by a qualified RPE which clearly outlines the intervals at which subsequent inspection reports will be necessary. The applicant would be required to submit all inspection reports to SCRO for documentation in the casefile for ADL 233843.

SCRO understands that a bridge crossing Beaver Creek within the ARFCCHA was installed in 2009 following authorization by ADF&G. SCRO recommends that the pre-existing bridge be included in the proposed public access easement but requires that a post-instruction report be conducted by a RPE to confirm the structural integrity of the bridge. SCRO advises that regular inspection reports by a RPE be required for the pre-existing bridge, consistent with the two proposed bridges.

In the event that any bridge installed within the proposed easement is deemed to be unsafe or is not inspected at an interval acceptable to an RPE, DMLW reserves the right to close the bridge to public use and require removal by the grantee at their own expense.

Monitoring activities and maintenance of the bridges and other infrastructure will be the exclusive responsibility of the grantee: DNR does not take responsibility for the maintenance of these bridges and other infrastructure.

Trail Weight Restrictions and Winter Grooming:

The applicant has noted that they are aware of and support a weight restriction for recreational off-road vehicles on general state land pursuant to 11 AAC 96.020, and a weight restriction of 1,000 lb. curb weight for recreational off-road vehicles within the ARFCCHA. The applicant further requests that vehicles used for trail maintenance, rehabilitation, construction, and grooming be exempt from additional authorizations.

For portions of the Watermelon Trail which fall upon general state lands, SCRO recommends that vehicles exceeding the weight restrictions of 11 AAC 96.020 be allowable only to facilitate trail maintenance, rehabilitation, construction, and grooming activities. SCRO concurs with the applicant that trail grooming by the Snomads on general state lands should only occur with a minimum snow base of six inches to protect the underlying vegetative mat. All other trail users must obtain an authorization for any vehicle use which exceeds the generally allowed uses pursuant to 11 AAC 96.020. The applicant currently has a valid Special Area Permit (21-V-0128-SA) to develop, construct, maintain, rehabilitate, and groom the Watermelon Trail within the ARFCCHA. Any trail users wishing to operate vehicles in excess of 1,000 lbs. within the ARFCCHA must seek approval from ADF&G pursuant to 5 AAC 95.

Potential for Oil & Gas Development:

The existing route of the Watermelon Trail requested by the applicant crosses six Lease Sale Tracts designated by DOG in the Cook Inlet Sale Area. While there are not currently any active oil and gas leases associated with the six tracts, DOG noted that the State reserves oil, gas, minerals, fissionable material, geothermal resources, and fossils that may be in or upon the land that it conveys in accordance with Section 6(i) of the Alaska Statehood Act and Alaska Statute 38.05.125. The State also reserves the right to enter the land for the purposes of exploring for, developing, and producing these mineral resources.

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, etc.), restoration (interim and final), and any associated costs after termination or expiration of the easement. In consideration of the low risk associated with the proposed authorization and the applicant's known history of compliance, SCRO recommends that a performance guaranty not be required at this time. DMLW reserves the right to require a performance guaranty during the term of the easement.

INSURANCE

SCRO recommends that insurance not be required as the grantee is self-insured. SCRO recommends that the grantee be required to provide proof of its contractor's insurance upon DMLW's request.

SURVEY

SCRO recommends that 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 prior to issuance of the entry authorization. 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

Per 11 AAC 05.020(b), SCRO recommends that interim and one-time issuance fee(s) for this authorization are waived as the request is in the public interest. However, the applicant will be required to pay the appropriate recording fees to have the easement recorded by DMLW.

ENTRY AUTHORIZATION

The entry authorization is an interim authorization issued when a survey is necessary prior to easement issuance. SCRO recommends that an entry authorization be issued for a term ending 5 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. The entry authorization may be revoked if the applicant has not supplied DMLW with a draft as-built 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. SCRO recommends that entry authorization not be granted until the following deliverables have been provided to DMLW, as described or recommended above:

- Evidence of having made request for survey instructions to the DMLW Survey Section.

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 the recommendation of SCRO to issue an easement as described above, on the condition that all stipulations are followed as described in the attached authorization.

Evan Dodd

Evan Dodd, Natural Resource Specialist 3
DMLW Southcentral Regional Land Office


6/28/2022

Date

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. This decision goes into effect and becomes a final administrative order and decision of the department on the 31st calendar day after issuance.

 for
Samantha Carroll, Regional Manager
DMLW Southcentral Regional Land Office

6/28/78
Date

ATTACHMENTS

- Attachment A: Location Diagram
- Entry authorization, unsigned
- Draft easement document

APPEAL

An eligible person affected by this decision may appeal 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)(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>.

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

ADL 233843
Public Access Easement
Watermelon Trail Improvements

Entry Authorization

The Kenai Peninsula Borough, herein known as the Grantee, is issued this Entry Authorization for the use of state land within:

Legal Description:

Applicable portions of Sections 10, 11, 15, 21, 22, 28, and 29, Township 4 South, Range 12 West, Seward Meridian, Sections 2, 3, 10, 15, 16, and 22, Township 5 South, Range 13 West, Seward Meridian, as further described in the Regional Manager's Decision for ADL 233843 dated June 28, 2022, and as depicted in Attachment A.

This Entry Authorization is issued for the purpose of authorizing the following:

Constructing, surveying, operating, and maintaining an existing public multi-use trail and related infrastructure.

This authorization is effective beginning _____ and ending _____, unless sooner terminated.

Stipulations:

1. **Authorized Officer:** The Authorized Officer (AO) for the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), is the Regional Manager or designee.
2. **Change of Contact Information:** The Grantee shall maintain current contact information with the AO. Any change of contact information must be submitted in writing to the AO.
3. **Valid Existing Rights:** This authorization is subject to all valid existing rights and reservations in and to the authorized area. The State makes no representations or warranties, whatsoever, either expressed or implied, as to the existence, number, or nature of such valid existing rights.
4. **Preference Right:** No preference right for subsequent authorizations is granted or implied by this authorization.

5. **Inspections:** The AO shall have reasonable access to the authorized area for inspection, which may be conducted without prior notice. If the Grantee is found to be in noncompliance, the authorized area may be subject to reinspection. The Grantee may be charged for actual expenses of any inspection.
6. **Public Access:** The construction, operation, use, and maintenance of the authorized area shall not interfere with public use of roads, trails, waters, landing areas, and public access easements. The ability to use or access state land or public waters may not be restricted in any manner. However, if a specific activity poses a safety concern, the AO may allow the restriction of public access for a specific period of time. The Grantee is required to contact the AO in advance for approval. No restriction is allowed unless specifically authorized in writing by the AO.
7. **Public Trust Doctrine:** The Public Trust Doctrine guarantees public access to, and the public right to use, navigable and public waters and the land beneath them for navigation, commerce, fishing, and other purposes. This authorization is subject to the principles of the Public Trust Doctrine regarding navigable or public waters. The AO reserves the right to grant other interests consistent with the Public Trust Doctrine.
8. **Alaska Historic Preservation Act:** The Alaska Historic Preservation Act, AS 41.35.200, prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric, archaeological or paleontological site without written approval from the DNR Commissioner. Should any sites be discovered, the Grantee shall cease any activities that may cause damage and immediately contact the AO and the Office of History and Archaeology in the Division of Parks and Recreation.
9. **Compliance with Government Requirements:** The Grantee shall, at its expense, comply with all federal, state, and local laws, regulations, and ordinances directly or indirectly related to this authorization. The Grantee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.
10. **Incurred Expenses:** The Grantor shall in no way be held liable for expenses incurred by the Grantee connected with the activities directly or indirectly related to this authorization.
11. **Waiver of Forbearance:** Any failure on the part of the AO to enforce the terms of this authorization, or the waiver of any right under this authorization by the Grantee, unless in writing, shall not discharge or invalidate the authorization of such terms. No forbearance or written waiver affects the right of the AO to enforce any terms in the event of any subsequent violations of terms of this authorization.
12. **Severability Clause:** If any clause or provision of this authorization is, in a final judicial proceeding, determined illegal, invalid, or unenforceable under present or future laws, then the Grantor and the Grantee agree that the remainder of this authorization will not be affected, and in lieu of each clause or provision of this authorization that is illegal, invalid, or unenforceable, there will be added as a part of this authorization a clause or provision as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

- 13. Assignment:** This authorization may not be transferred or assigned without the prior written consent of the AO.
- 14. Indemnification:** In connection with the entry on or use of these lands, subject to the limitations and provision of AS 09.50.250-270 and AS 37.05.170, the Grantee shall ensure that its contractors and subcontractors shall indemnify, save harmless, and defend the State, its agents and its employees from any and all claims or actions for injuries sustained by any person or property arising directly or indirectly from the construction of the contractor's performance of the contract, except when the sole proximate cause of the injury or damage is the State's negligence.
- 15. Fuel and Hazardous Substances:** No fuel or hazardous substances may be stored in the authorized area without prior written approval from the AO.
- 16. Insurance:** Insurance is not required. The AO reserves the right to require insurance during the term of this authorization. If required, insurance of a type and in an amount acceptable to the AO, must be provided and remain in place during the term of this authorization. The type and amount of insurance may be adjusted to reflect updates and changes in the associated project.
- 17. Removal of Improvements and Site Restoration:** Upon termination of this authorization, whether by abandonment, revocation or any other means, the Grantee shall within 30 days remove all improvements from the area herein granted, except those owned by the State, and the site shall be restored to a condition acceptable to the AO. Should the Grantee fail or refuse to remove said structures or improvements within the time allotted, they shall revert to and become the property of the State; however, the Grantee shall not be relieved of the cost of the removal of the structures, improvements and/or the cost of restoring the area.
- 18. Concurrent Use:** The DMLW reserves the right to grant additional authorizations to third parties for compatible uses on or adjacent to the land under this authorization. Authorized concurrent users of State land, their agents, employees, contractors, subcontractors, and licensees shall not interfere with the operation or maintenance activities of each user. The DMLW may require authorized concurrent users of State land to enter into an equitable agreement regarding concurrent use.
- 19. Performance Guaranty:** A performance guaranty is not required. The provisions of this authorization shall not prejudice the State's right to obtain remedy under any law or regulation.
- 20. Extensions:** The AO may approve a written request to extend this authorization if additional time is necessary to meet its requirements. The written request must certify that there have been no changes to the approved development plan and be received at least 30 days before the expiration date of this authorization. Additional fees may be required.
- 21. Violations:** This authorization may be revoked upon violation of any of its terms, conditions, stipulations, nonpayment of fees, or upon failure to comply with any other applicable laws, statutes, and regulations. A revocation may not become effective until 60 days after the Grantee has been notified in writing of the violation during which time the Grantee has an

opportunity to cure any such violation. No public access easement may be terminated without the prior written approval of DMLW.

- 22. Notification of Discharge:** The Grantee shall immediately notify the Department of Environmental Conservation (DEC) and AO of any unauthorized discharge of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons on land. All fires and explosions must also be reported immediately.

If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, the Grantee shall report the discharge within 48 hours. Any discharge of oil greater than one gallon up to 10 gallons, including a cumulative discharge, solely to land, must be reported in writing on a monthly basis.

Notification of discharge during normal business hours must be made to the nearest DEC Area Response Team: Anchorage (907) 269-3063, fax (907) 269-7648; Fairbanks (907) 451-2121, fax (907) 451-2362; Juneau (907) 465-5340, fax (907) 465-5245. To report a spill outside of normal business hours, call toll free 1-800-478-9300 or international 1-907-269-0667. Notification of discharge must be made to the appropriate DNR Office, preferably by e-mail: Anchorage email dnr.scro.spill@alaska.gov, (907) 269-8528; Fairbanks email dnr.nro.spill@alaska.gov, (907) 451-2739; Juneau email dnr.sero@alaska.gov, (907) 465-3513. The Grantee shall supply the AO with all incident reports submitted to DEC.

- 23. Returned Check Penalty:** A returned check penalty of \$50.00 will be charged for any check on which the bank refuses payment. Late payment penalties shall continue to accrue.
- 24. Late Payment Penalty Charges:** The Grantee shall pay a fee for any late payment. The amount is the greater of either \$50.00 or interest accrued daily at the rate of 10.5% per annum and will be assessed on each past-due payment until paid in full.
- 25. Fees:** Land use fees for this authorization are waived in accordance with 11 AAC 05.020 (b).
- 26. Request for Information:** The AO, at any time, may require the Grantee to provide any information directly or indirectly related to this authorization in a manner prescribed by the AO.
- 27. Annual Report:** An annual report shall be submitted by December 15 of each year outlining work completed that year, work to be completed next year, and anticipated construction completion timeframe.
- 28. Post Construction Reporting:** A report shall be submitted to the AO by December 15 in any year wherein construction activities occurred that describes the changes made to improvements within the easement during the preceding year. The report shall include photos of all portions of the easement and infrastructure therein that were the focus of construction activities that would be readily accessible to DMLW personnel during a site inspection.
- 29. Waste Disposal:** On-site refuse disposal is prohibited unless specifically authorized. All waste generated during operation, maintenance, and termination activities under this

authorization shall be removed and disposed of at an off-site DEC approved disposal facility. Waste, in this paragraph, means all discarded matter, including but not limited to human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and discarded equipment.

- 30. Destruction of Markers:** The Grantee shall protect all survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, and unsurveyed corner posts against damage, destruction, or obliteration. The Grantee shall notify the AO of any damaged, destroyed, or obliterated markers and shall reestablish the markers at the Grantee's expense in accordance with accepted survey practices of the DMLW.
- 31. Site Maintenance:** The authorized area shall be maintained in a neat, clean, and safe condition, free of any solid waste, debris, or litter, except as specifically authorized herein.
- 32. Maintenance of Improvements:** The Grantor is not responsible for maintenance of authorized improvements or liable for injuries or damages related to those improvements. No action or inaction of the Grantor is to be construed as assumption of responsibility.
- 33. Amendment or Modification:** The Grantee may request an amendment or modification of this authorization; the Grantee's request must be in writing. Any amendment or modification must be approved by the AO in advance and may require additional fees and changes to the terms of this authorization.
- 34. Development Plan:** Development shall be limited to the authorized area and improvements specified in the approved development plan or subsequent modifications approved by the AO. The Grantee is responsible for accurately siting development and operations within the authorized area. Any proposed revisions to the development plan must be approved in writing by the AO before the change in use or development occurs.
- 35. Proper Location:** This authorization is for activities on state lands or interests managed by DMLW. It does not authorize any activities on private, federal, native, and municipal lands, or lands which are owned or solely managed by other offices and agencies of the State. The Grantee is responsible for proper location within the authorized area.
- 36. Choice of Venue:** This authorization shall be construed under the laws of the State of Alaska. The Grantee confers personal jurisdiction on the courts of the State of Alaska for any litigation under this authorization.
- 37. Stop Work Orders:** Stop Work Orders may be issued if there is a deviation from design criteria, project specifications, stipulations, state statutes, or state regulations and that deviation is causing or is likely to cause significant damage to state resources. Under a Stop Work Order, work at the area subject to the Stop Work Order may not resume until the deviation is cured and corrective action is taken. Corrective action may include halting or avoiding specific conduct, implementing alternative measures, repairing any damage to state resources that may have resulted from the conduct, or other action as determined by the AO. The AO has the right but not the obligation, to undertake corrective action at the expense of the Grantee by moving against the performance bond when such action is necessitated by neglect or inaction on the part of the Grantee to take corrective action.

- 38. Existing Easements:** In the event that this easement shall in any manner conflict with or overlap a previously granted easement or right-of-way, the Grantee shall use this easement in a manner that will not interfere with the peaceful use and enjoyment of the previously issued easement or right-of-way. The Grantor reserves the right to set or modify stipulations governing the use of the conflicting or overlapping area.
- 39. Survey:** The Grantee shall submit a record of survey format as-built acceptable to the standards of the Survey Section prior to the expiration of this Entry Authorization. The Grantee is required to submit a preliminary draft as-built survey one year prior to the expiration of this authorization to allow adequate time for the State's review and approval of a final as-built survey. The final easement will not be issued until the survey has been approved by the DMLW.
- 40. Fire Prevention, Protection and Liability:** The Grantee shall take all reasonable precautions to prevent and suppress forest, structure, brush and grass fires, and shall assume full liability for any damage to state land and structures resulting from the negligent use of fire. The State is not liable for damage to the Grantee's personal property and is not responsible for forest fire protection of the Grantee's activity. To report a wildfire, call 911 or 1-800-237-3633.

Any correspondence on this authorization may be directed to the Department of Natural Resources, Division of Mining, Land and Water, Southcentral Regional Land Office, 550 West 7th Avenue, Suite 900C, Anchorage, AK 99501, (907) 269-8503.

I have read and understand all of the foregoing and attached stipulations. By signing this authorization, I agree to conduct the authorized activity in accordance with the terms and conditions of this authorization.

Signature of Grantee or Authorized Representative	Title	Date
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Grantee's Address	City	State	Zip
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Contact Person	Primary Phone	Alternate Phone
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Signature of Authorized State Representative	Title	Date
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