

Elizabeth D. Friedman
17355 East Idle Drive
Palmer, AK 99645

Re: Comments pursuant to AS 38.05.850 regarding Site Easement Maud Road Extension and Consistency with Alaska Coastal Management Program (ACMP)

Dear Sir:

The following are comments I am submitting as a resident of the affected area regarding the unmonitored shooting range proposed for development in the easement on Maud Road Extension. My comments are in two parts (with cross-references as appropriate):

I. Easement Application; and II. Consistency with ACMP

I. EASEMENT APPLICATION

A. The Proposed Shooting Range does not Comply with AS 38.05.850

AS 38.05.850 provides authorization for the director of the Department of Natural Resources to issue permits, rights-of-way, or easements for specified purposes. A shooting range does not fall within the purposes specified in AS 38.05.850:

Sec. 38.05.850. Permits.

(a) The director, without the prior approval of the commissioner, may issue permits, rights-of-way, or easements on state land for **roads, trails, ditches, field gathering lines or transmission and distribution pipelines not subject to AS 38.35, telephone or electric transmission and distribution lines, log storage, oil well drilling sites and production facilities for the purposes of recovering minerals from adjacent land under valid lease, and other similar uses or improvements, or revocable, nonexclusive permits for the personal or commercial use or removal of resources that the director has determined to be of limited value.**

....

(Emphasis added)

Additionally, AS 38.05.850 (a) requires the establishment of a reasonable rate or fee schedule for the proposed uses: the only exception is for cooperative utility easements. The director is required to “give preference to uses that will be of greatest economic benefit to the state and the development of its resources.” There is no showing that the shooting range will provide any economic benefit to the state or will develop resources. As discussed further *infra* the shooting range will have negative impacts on wildlife resources and recreational uses.

2. The Public Notice Provisions of AS 38.05.850 (c) have been violated.

DNR has commenced this project during the public notice period: significant amounts of land have been cleared as shown by aerial photographs taken on April 26, 2009 by local resident Ted Cox. The construction of a shooting range is not “functionally revocable” i.e. once constructed it is a permanent fixture. Because the land has been cleared for trees, thus creating a venue shooting even if the actual range were not constructed, DNR has in effect granted the easement prior to the close of the public notice period:

AS 38.05.850 (c) If the director determines, by evaluation of the nature and duration of the intended use, that an easement or right-of-way issued under this section **will not be functionally revocable, the director shall provide public notice before issuing the easement or right-of-way**

The application for the easement contains an admission that the public process for review has been violated: on page 2 of the application it states that construction will begin **April 1, 2009** and will be completed by May 31, 2009. Therefore, DNR admits that it is violating the public notice/comments provisions of AS 38.05.850.

3. Who is the beneficiary of the Easement?

It is unclear from the Site Easement Application who the beneficiary of the easement is? Will DNR be granting itself an easement? Is the shooting range easement to be granted to an undisclosed entity? This information is required to be disclosed to the public.

B. The Application for Easement Contains Material Misstatements of Fact.

The application at page 2, first full paragraph, states that “small trees will be removed/chipped”. In fact, close to 500 large birch trees have been chopped down. (See attached photos).

The size of the range itself is described differently in the risk assessment and in the application for easement. In the risk assessment the range is estimated at approximately 100 x 600 feet. In the application for easement, the easement applied for is 750 x 300 feet. There is no explanation for the discrepancy or a description of what other use(s) the remainder of the easement will encompass.

The application states that the rifle range is an “existing use.” This is incorrect. The area which is being cleared for the rifle range was forested land, not a rifle range. Although there has been illegal shooting in the area, this does not qualify as an existing legal use as a rifle range.

II. ALASKA COASTAL MANAGEMENT PROGRAM

A. Coastal Project Questionnaire and Certification Statement was Not Completed Fully or Accurately.

1. Failure to Disclose of EPA Application.

On page 8 of 18, the applicant is required to disclose its U.S. EPA contact and to submit a completed application. The name of the EPA contact is not provided and a copy of the required application has not been provided to the public for comment.

2. Failure to Respond Accurately or Completely to 11 AAC 112.200 Standards.

Section (a) of the standards states: “In planning for and approving development in or adjacent to costal waters, ... state agencies shall manage costal land and water uses in such a manner that those uses that are economically or physically dependent on a costal location are given higher priority when compared to uses that do not economically or physically require a costal location.”

The agency is required to evaluate its project for compliance with the above standard by describing how the project is physically or economically dependent on a coastal location, and why the project is to be placed in the selected location.

DNR admitted that there is no coastal nexus: “this project is not economically or physically dependent on a coastal location.” In response to why the project site was selected, DNR states that the “site has a long history of recreational target shooting and just happens to fall inside the coastal zone boundary.” DNR is not correct: the site itself is forested land which it has clear-cut prior to obtaining permission for this

project. Furthermore, there has been a history of illegal, dangerous shooting activities in the vicinity of the proposed shooting range. The undersigned has personally seen on numerous occasions sites within a half mile radius of the proposed range where there has been drinking and shooting and illegal fires during burn ban times. Individuals have been shooting indiscriminately into lakes and wetlands, across roads and trails (a felony under Alaska law), and into the trunks of living trees. This is not “recreational” it is dangerous, illegal activity. DNR has the burden to prove that its proposed unmonitored firing range will mitigate the illegal activity.

DNR has been operating on the unproven assumption that if it constructs a range, the illegal shooting will cease. If there is no monitoring at this range, what is to prevent unsafe, drunken shooting which is prevalent in the area?

DNR has failed to weigh development of this shooting range with respect to the priority it is required to give to “water-dependent uses and activities” and “water related uses and activities.”

Water-dependent uses and activities are accessed through the one-lane, unpaved Maud Road extension which boaters must use to launch sites on Mud Lake and Jim Lake. The boaters, often with children, will have to go past the unsupervised firing range. There is no guarantee that shooting will be conducted safely or that the safety of the boaters can be assured. Additionally, there has been no traffic impact study: what will the impact of increased use of the unpaved, and barely maintained, Maud Road extension be? DNR has not studied how many additional users will be attracted to this area and the traffic impacts for other users. There has been no statement about parking facilities: will the rifle range users park on the road and block it for vehicles towing boats?

In addition to boating, the Mud Lake and Jim Lake provide an opportunity for bird-watching. There are nesting swans, migrating snow geese and other water fowl which individuals (including the undersigned) enjoy observing. The impact of a rifle range with constant firing will frighten the water fowl and will detract significantly from the quiet enjoyment of watching the birds.

DNR has failed to address “**why there is not a practicable inland alternative the meets the public need for theactivity.**” DNR has simply stated that it is putting the range on Maud Road extension because people shoot there. DNR has failed to explain why an alternative site for a shooting range which does not impact on water activities could not be built.

3. 11 AAC 112.220 Coastal Access

DNR states that the project will “not affect public access to, from, and along coastal waters.” As discussed *supra* the shooting range is located along the access road in launching sites for Mud Lake, Jim Lake and into the waters connecting to the Knik River and its watershed. DNR has conducted no studies concerning increased use of the single-lane Maud Road extension for vehicles towing boats or the affect of further degradation of the dirt road would have on the feasibility of boat access. Additionally, DNR has not evaluated the increased public safety risk of an uncontrolled shooting range alongside this coastal waters access road. Maud Road extension is not a state maintained road: it is difficult for State Troopers to access. For most of the year, it is not accessible in a non-four wheel drive vehicle. The difficulty in access increases the public safety risks for coastal users.

4. **11 AAC 112.300 Habitats**

DNR has failed to address the impacts on habitat for birds and wildlife in the area. DNR claims that this section is “not applicable” and does not make any findings. During the course of the KPRUA public comment period, organizations such as the Audubon Society, the Alaska Center for the Environment, and other environmental and scientific organizations submitted a significant amount of information on the environmental sensitivity of this area including but not limited to the migratory and nesting birds. DNR has failed to include any assessment of the impact of a shooting range which will be open 24 hours a day on the birds and wildlife in the area. The concerns raised by these groups are incorporated herein.

The Audubon Society has listed the Jim Creek Basin as an “IBA” (Important Bird Area). An IBA listing is limited to areas of significance for wild fowl. The following quotation from the 2009 IBA listing describes the habitat and the significance of it:

Site Description:

The Jim Creek Basin is a complex of lakes, ponds and wetlands in the lower Knik River valley, southeast of the community of Palmer. The basin is sandwiched between the Chugach Mountains to the north and the Knik River to the south, and often provides birds with access to open water when much of the surrounding area is frozen. Being close to a community, and well within easy reach of Anchorage, the area is heavily used for hunting and recreation.

Ornithological Summary:

The Jim Creek Basin is an important waterfowl stopover site, where concentrations of Trumpeter Swans build up in Spring (early to mid-April) each year. Trumpeter Swans also stop here in the Fall in good numbers. However, they face greater disturbance at this time of year as the area suffers from intense

waterfowl hunting and increasing use of airboats and other motorized activity (ATVs). A small number of Trumpeter Swans (5-6 pairs) attempt to nest each year, although generally only a few (2-3 pairs) are successful. Of the Audubon WatchList species, Hudsonian Godwits and Short-billed Dowitchers occur in small numbers, and Olive-sided Flycatchers and Rusty Blackbirds breed regularly. Of the State Species of Concern, both Townsend's and Blackpoll Warblers breed regularly in the area.

Conservation Issues:

The Jim Creek Basin area suffers intense ATV and airboat recreational use, as well as heavy use by moose and waterfowl hunters. Highest use occurs from early-May through October. Off-road, motorized traffic is not confined to existing trails and causes considerable erosion on dunes. There is no enforcement presence in the basin.

Citation: National Audubon Society 2009. Important Bird Areas in the U.S. Available at <http://www.audubon.org/bird/iba> 04/2009

5. 11 AAC 12.320: DNR did not respond that it had investigated the site prior to clear-cutting.

DNR has failed to state whether it contacted the State Historic Preservation Office prior to deforesting 5 acres to see whether there were any historic, prehistoric or archeological sites in the area.

SUMMARY:

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DNR has failed to assess the impacts for public safety, degradation of the existing access to coastal recreation, and habitat impacts. The proposed shooting range is violative of the Alaska Coastal Management Program. The easement application fails to comply with AS 38.05.850 and contains materially misleading statements.