

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

Southcentral Regional Land Office

Memorandum of Decision

LAS 35659

J T MINING, INC.

Application for Land Use Permit

AS 38.05.850

Requested Action

Applicant, J T Mining Inc, is requesting issuance of a 2-year Land Use Permit for the placement of (2) Nortek Acoustic Wave and Current Profilers within the submerged lands of Tuxedni Channel for research purposes.

Proposed Action

The Department of Natural Resources, Division of Mining, Land, and Water, Southcentral Regional Land Office proposes to issue a Land Use Permit to J T Mining for a 2-year Land Use Permit for the placement of (2) Nortek Acoustic Wave and Current Profilers within the tidelands of Tuxedni Channel for research purposes.

Scope of Decision

The scope of this decision is limited to determining if it is appropriate for the Department of Natural Resources (DNR) to issue an authorization for the proposed land use activities.

Statutory Authority

This permit is being adjudicated pursuant to AS 38.05.850..

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 2000 Kenai Area Plan and other classification references described herein, and the casefile for the application serialized by DNR as LAS 35659.

Location Information

Geographic Location: Located within the tidelands of the Tuxedni Channel, between Chiskik Island and the mainland, on the west side of Cook Inlet.

Latitude: 60.12268° N **Longitude:** 152.6144° W **Datum:** NAD83

Latitude: 60.14361° N **Longitude:** 152.6388° W **Datum:** NAD83

Legal Description:

Site A: Section 30, Township 1 North, Range 19 West, Seward Meridian

Site B: Section 6, Township 1 South, Range 19 West, Seward Meridian

Other Land Information

Municipality: Kenai Peninsula Borough

Regional Corporation: Cook Inlet Region Inc.
Special Use Area: Lake Clark Coastline Special Use Area

Title

Title to the submerged lands of the Cook Inlet was received by the State on January 3, 1959, upon Presidential proclamation (Proclamation No. 3269, 24 F.R. 81, 73 Stat. c16) admitting Alaska to the Union pursuant to Section 8(c) of the Alaska Statehood Act (Pub. L. No. 85-508, 72 Stat. 339), according to the Equal Footing Doctrine of the United States Constitution and the Submerged Lands Act of 1953 (43 U.S.C. §1301 et. seq.).

Planning & Classification

Kenai Area Plan

Region 12: West side of Cook Inlet -- South of Redoubt Bay

Map 12A - Tuxedni Bay

Unit 522A: General Use Tidelands

Land Use Classification: Public Recreation Land

The proposed permit locations are within the maritime boundary of the Tuxedni State Game Refuge and within the Lake Clark Coastline Special Use Area (ADL 227835). Generally allowed uses as listed in 11 AAC 96.020 at this time are not subject to a special restriction in this area. The applied-for areas and use is consistent with the area plan as well as the Special Use Area Designation.

Public Notice & Agency Review

Agency Review Summary

The Agency Review period began July 23rd, 2025 and concluded August 8th, 2025. Notice was sent to DNR Office of History & Archaeology (OHA), DNR Division of Oil & Gas (DOG), DNR State Parks Permitting, US Army Corps of Engineers (USACE), Environmental Protection Agency (EPA) - Matthew Lacroix, ADF&G - Habitat Division Southcentral - Megan Marie, ADF&G - Access Defense Program, Alaska Department of Transportation (DOT&PF) - Heather O'Claray, DEC Agency Reviews, US Fish and Wildlife Service (USFWS), NOAA Fisheries (NMFS), and USFWS Alaska Maritime Refuge - Jeff Williams. A request for extension was requested, and then the public comment period was lengthened until August 14, 2025.

Agency Review Comment and Response

DOT&PF responded with no comment on this proposal.

NMFS commented after the agency review period ended and then rescinded.

ADF&G commented with no objection to this proposal but made the following recommendations:

- Data collected by the buoys be sent to ADF&G for understanding razor clam dispersal.

- Consulting with the NMFS and the USFWS to mitigate disturbances to local marine mammals. If any disturbances or take are noticed then the permittee should contact the appropriate authorities at NMFS, USFWS, and ADF&G.
- Reduce risks by using lines to tether vessels together taught to avoid entanglement, properly dispose of waste, placing clearing identifying markings and develop a contingency plan in case retrieval fails.
- Project may affect Endangered Species Act (ESA) listed species and to identify and mitigate risks to migratory birds.

Response:

SCRO thanks ADF&G for their comment which has been forwarded to the applicant in its entirety. Advisories will be added to the permit to address recommendations not covered under stipulations.

Public Notice Summary

The Public Notice period began July 23rd, 2025 and concluded August 8th, 2025. Notice was posted to the Online Public Notice website, sent to the applicant, upland owner (National Parks Service), and mailed to the two nearest post offices. A request for extension was requested, and then the public comment period was lengthened until August 14, 2025.

Public Notice Comment and Response

One public comment was received from the Center for Biological Diversity citing the following concerns:

- Tuxedni Channel is the only winter foraging area for endangered Cook Inlet Belugas in addition to being one of the quietest places in their designated critical habitat.
- Issuing a permit without rigorous consideration of the harm to Cook Inlet Beluga whales would violate Alaska Constitution.

SCRO Response:

The applicant has been in communication with the National Marine Fisheries Service and the National Parks Service to ensure that the proper consultations and authorizations are in place.

One Public comment was received from Aquacoustics LLC citing the following concerns:

- Have the applicants consulted with cetacean biologists to make sure their proposed study will not interfere with whales or dolphins.
- Tuxedni is the only area where winter feeding activity has been documented for the endangered Cook Inlet beluga whale. It is considered a quiet refugium with a soundscape belugas have evolved for, i.e. no noise pollution that would interfere with their ability to communicate or feed or stress them.

SCRO Response:

The applicant has been in communication with the National Marine Fisheries Service and the National Parks Service to ensure that the proper consultations and authorizations are in place.

Environmental Considerations

Advisories will be added to the permit related to wildlife concerns expressed during the agency review period. No hazardous materials or fuel will be stored at the permit site. Any other potential environmental risks are minimal and are further mitigated by permit stipulations.

Discussion:

The profilers are intended to measure directional waves, currents, ice thickness, and water levels in the Tuxedni Channel. The battery powered profilers will be installed on weighted tripods on the seabed. Tilt sensing pingers (EMT-AR) made by Sonotronics will be attached to the tripods to monitor tilt angles after deployment.

The site will be visited by the permittee three times over the course of two years: for deployment, intermediate service after approximately 300 days, and then for final retrieval. A passive acoustic pop-up buoy will be triggered for retrieval and will be the only time there is a surface presence of the buoys.

Performance Guaranty

Performance guarantees are means to assure performance and to provide ways to pay for corrective action if the grantee fails to comply with the requirements set forth in the permit document. They are also used to protect state land from damage and to make certain that improvements are removed and that the land is returned in a usable condition upon termination of the permit.

Pursuant to 11 AAC 96.060, a performance guaranty in the amount of \$1,000.00, typically in the form of a bond or other security, will be required.

Insurance

Insurance is a means to protect the state from liabilities incurred through the use of state property, or from damage to state property as a result of accidental or catastrophic events. This type of protection is necessary in the event of an accident or negligence that was consequentially connected to activities conducted on state land, and/or if the state is named in a lawsuit as a result of an accident or negligence.

Pursuant to 11 AAC 96.065, insurance naming the State of Alaska as additionally insured will be required.

Fee: other land use permit under [AS 38.05.850](#) for a use not covered by (B) - (I) of this paragraph that does not hinder other public use, such as moving heavy equipment across state land, \$300 annually, reduced to \$240 by Director's Fee Order Number 3.

Fee: \$240 Annually

Relevant Fee Regulation(s): Per 11 AAC 05.180 (d)(2)(J)

Term

Effective Date: August 11, 2025

Expiration Date: March 31, 2027

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 my recommendation to issue this Land Use Permit on condition that all permit stipulations are followed as described in the attached permit. During the period of the permit an inspection may be conducted at the discretion of the Department of Natural Resources to ensure permit compliance.

Christian Gehman

Christian Gehman

Natural Resource Technician 2

9/17/2025

Date

Manager's Decision

It is the decision of this office to take the action as recommended above. This decision takes effect immediately. If no appeal is filed by the appeal deadline, this decision becomes a final administrative order and decision of the department. 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 permit. Additional time may be allotted to complete these requirements at the applicant's request and concurrence of the Authorized Officer, however this will not extend the total term of the authorizations issued under this decision.

Heather Thomas

Heather Thomas

Natural Resource Manager I

9/17/2025

Date

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