



Preliminary Regional Manager's Decision
Alaska Electric Light and Power Co.
ADL 108448 – Easement
AS 38.05.850

I. Requested Action

An application dated Nov. 18, 2015 was received from Alaska Electric Light and Power Co. (Applicant) requesting use of state-owned land in Sheep Creek Valley to operate and maintain an existing transmission line. The transmission line was originally built in 1915 and has been used continuously since then. The Applicant has an existing federally reserved 40-foot wide right-of-way across the subject land.¹ Applicant is requesting an additional 60 feet (30' both sides of centerline) from the State for additional access to maintain and replace poles. The transmission line originates at the Annex Creek hydroelectric facility and is part of Federal Energy Regulatory Commission (FERC) project number P-2307.

Proposed Action

The Southeast Region Department of Natural Resources (DNR), Division of Mining, Land & Water (DMLW) intends to issue the Applicant a private non-exclusive easement for use of state-owned land with a 30-year term concurrent with the term of the Applicant's expected new FERC license, or less than 30 years if the easement is no longer used for the requested purpose.

II. Statutory Authority

AS 38.05.035, AS 38.05.850 and Alaska Administrative Code 11 AAC 55.

III. Administrative Record

Case file ADL 108448 is the administrative record for this case. Also incorporated by reference is the Juneau State Land Plan (JSLP, December 1993).

IV. Scope of the Decision

The scope of administrative review for this authorization is guided by AS 38.05.850(a) and to (1) reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and

¹ Public Land Order No. 5108, Juneau Rec. Dist., 92-3867, Jul 21, 1992
Preliminary Regional Manager's Decision

regulations; (3) the facts pertaining to the land or resources; and (4) issues that are material to the determination that issuing the authorization will best serve the interest of the State of Alaska.

V. Location Information

Geographic Location

The proposed easement is on state-owned land located in Sheep Creek Valley, approximately 4 miles southeast of downtown Juneau, Alaska.

Legal Description

Copper River Meridian, Township 41 South, Range 68 East, Sections 32, 33, and 34 for a combined total of approximately 12.5 acres of land.

Width: 60' (exclusive of existing 40' right-of-way) **Length:** 9,500 feet **Acreage:** 12.5

Other Land Information

- i. Municipality:** City and Borough of Juneau (Unified Home Rule Borough)
- ii. (ANCSA) Regional Corporation:** Sealaska Corporation
- iii. Village Corporation:** Goldbelt, Incorporated
- iv. Federally Recognized Tribe:** Central Council of the Tlingit and Haida Indian Tribes, Douglas Indian Association

VI. Land Status Information

Title

The State of Alaska holds fee title to the land and mineral estates within the subject Sections 32, 33, and 34, excluding the right-of-way for Power Project 2307 and Mineral Survey 900, Mineral Survey 1600, U.S. Survey 1078 and U.S. Survey 1115 as depicted on Master Title Plat for CT041SR068E.² Surface management of state land in the area is managed by DNR Division of Parks and Outdoor Recreation.

Planning and Classification

According to 11 AAC 55.040(c), "A classification identifies the primary use for which the land will be managed, subject to valid existing rights and to multiple use."

The proposed site is located within the City and Borough of Juneau Region 7b and is zoned as a rural reserve watershed protection area. The area is subject to the Juneau State Land Plan (JSLP, December 1993) and is located primarily within Management Unit 7b26 (lower Sheep Creek). A small portion also traverses Unit 7b27.

² RPT 8643 DNR Realty Services
Preliminary Regional Manager's Decision

The designated land use within Unit 7b26 is Ha, M, and Rd. Unit 7b27 has the additional of water resources and uses. At the time the plan was made the listed resources were black bear spring habitat, goat winter habitat, proposed mining facilities, and potential hydroelectric facilities.³

- “Ha” Habitat – Designation for areas with the most valuable habitat is defined as: limited, concentrated-use area for fish and wildlife species during a sensitive life-history stage where alteration of the habitat or human disturbance could result in a permanent loss of a population or species’ sustained yield.⁴ This designation converts to Wildlife Habitat land as the land classification.
- “M” Minerals Development – a primary surface designation for minerals is used where intensive mineral exploration or development is currently taking place or is highly likely in the near term (5 to 10 years).
- “Rd” Recreation and Tourism Dispersed Use – This designation is for areas that attract recreationists or tourists who range throughout the area. Also, areas that offer high potential for dispersed recreation or tourism because of desirable recreation conditions that are scattered or widespread rather than localized. Developed facilities are generally not necessary.⁵ This designation converts to Public recreation land as the land classification.
- “W” Water Resources and Uses – Areas of important water sources or water-sheds.

The transmission line right-of-way, at issue here, and which crosses units 7b26 and 7b27 predates the JSLP. And is noted in the JSLP as a pre-existing structure. Additionally, as there is no new construction or clearing of flora proposed by the Applicant, as such, there are no conflicts with the existing land use designations in the area.

Revised Statute 2477 Right-of-Way

The State recognizes RST-599 (Sheep Creek Trail) as a perfected RS 2477 public right-of-way. RST-599 generally overlaps the existing Sheep Creek hiking trail which intersects and overlaps the Applicant’s existing and proposed right-of-way at numerous points in the Sheep Creek Valley. Presently, there are no conflicts between the two non-exclusive rights-of-way. The Applicant’s existing and proposed easement may also inter-

³ JSLP chap.3 p. 140

⁴ JSLP chap.3 p.3

⁵ JSLP chap.3 p.5

sect, come near, or run adjacent to, a former tram line and existing modern day road, which may also qualify for RS 2477 status, but has yet to be nominated as such.

Mineral Closing Order

The subject land is covered by Mineral Closing Order 576.⁶ All state-owned land in Sheep Creek Valley is closed to new mining claims.

VII. Third Party Interests

There are no known third party interests.

VIII. Background

Between 1912 and 1915, the Gastineau Mining Company constructed the Annex Creek hydroelectric facilities. Portions of the power project and the Annex Creek (Sheep Creek) transmission line are eligible for listing in the National Register of Historic Places. The powerline at issue here is registered in Alaska under the Alaska Heritage Resources Survey as JNU-00511.

In 1936, the Annex Creek facilities were merged into the Alaska Juneau Gold Mining Company (AJ industries). In 1963, the Federal Power Commission issued a license to AJ Industries to continue to operate the Annex Creek and Salmon Creek hydropower facilities with the condition that both dams be rehabilitated. The Applicant, AEL&P, purchased the hydroelectric and transmission facilities from AJ Industries in 1973. And the operating license was then transferred to the Applicant. In 1988, AEL&P received a 30-year license from FERC, and is in the process of obtaining another 30-year license.⁷

The subject land was federally owned and managed until a state selected community grant was tentatively approved by the Bureau of Land Management for conveyance to the State in July 1992 under AA-71140. The grant to the State reserved a 40' right-of-way for the Applicant for the transmission line. This application for an additional 30' both sides of the centerline is the first time that the State has been requested to issue an easement for the 102-year-old powerline.

Related Actions

In conjunction with this easement application the Applicant also applied for an easement for the Salmon Creek portion of FERC power project P-2307. After DMLW's initial review, it was determined that Applicant was previously granted the right-of way on the requested state-owned lands through a Bureau of Land Management Tentative Approval

⁶ JSLP Appendix B-29

⁷ FERC No. 2307, Draft License Application, electronically filed February 29, 2016
Preliminary Regional Manager's Decision

and FERC's January 12, 2016 order approving project boundary changes.⁸ Thus that easement application (ADL 108449) has been closed.

IX. Agency Review

Because no new construction is proposed by the Applicant and because the agencies have had and continue to have opportunities to comment through the FERC licensing process, DNR did not undertake an agency review prior to the issuance of this preliminary decision. All agencies are invited to comment during the public notice period.

X. Access

Physical and Legal Access

The physical access to the proposed easement area is predominantly via a foottrail that under Alaska law is a recognized public right-of-way perfected under revised statute 2477 (RS 2477).

XI. Environmental Considerations

It is our management responsibility to protect the overall public interest if there is a reasonable expectation that a hazardous condition, or hazardous, toxic or radiological material or contamination from such material exists or is known to exist on the land being considered. No hazardous material or contamination from hazardous material is known to exist on the land.

The Applicant is expected to inspect the prospective site and familiarize itself with the condition and quality of the land. The state makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land. The State of Alaska does not assume any liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances ever be identified.

Considering that there is no planned new construction and that the transmission line has been in place and maintained for over 100 years, there are few new environmental concerns, or concerns that have not been addressed in previous FERC licensing decisions. The Applicant does not plan to remove trees from state land and will only do so as required for line maintenance, and when necessary in accordance with Alaska Division of Forestry guidelines. On April 18, 2017, FERC issued a notice that AEL&P's Salmon and Annex Creek project was ready for environmental analysis and was soliciting public comments.⁹

⁸ Tentative Approval, Department of Interior, Bureau of Land Management, AA-71140, June 9, 2004, Recording Dist. 101, 2004-011251-0; FERC ¶ 62,018, Project No. 2307-072

⁹ FERC Notice, P-2307-078, April 18, 2017

XII. Performance Guarantee

In accordance with 11 AAC 96.060, performance guaranties are means to assure performance and to provide ways to pay for corrective action if the permittee fails to comply with the requirements set forth in the project plans and easement. The amount of the performance guaranty is based on the scope and the nature of the activity and the potential cost of restoring the site. As this is a pre-existing structure and no new structures are to be built on state-owned land, there is no performance guarantee required for this easement at present.

Performance guaranties are subject to periodic adjustments being made during the term of the authorization to address increases or decreases in risk associated with the project, the costs of rectifying problems, and restoring state land due to inflation, changes in the level or nature of development, or other appropriate factors.

XIII. 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.

- **Commercial General Liability Insurance:** Such policy shall have minimum coverage limits of \$1,000,000 combined single limit per occurrence.
- **Workers' Compensation Insurance:** The Applicant shall provide and maintain, for all its employees, Workers' Compensation Insurance as required by AS 23.30.045. Where applicable, coverage must comply with any other statutory obligations, whether Federal (i.e., U.S.L.&H., or, Jones Act) or other state laws in which employees are engaged in work on the leased premises. The insurance policy must contain a waiver of subrogation clause in favor of the State of Alaska.

If the Applicant's general liability policy contains higher limits, we shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to us prior to the issuance of this lease and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. The Applicant must provide for a 60-day prior notice to the State of Alaska before they cancel, not renew or make material changes to conditions to the policy. Failure to furnish satisfactory evidence of insurance, or lapse of the policy, is a material breach of this lease and shall be grounds, at the option of the State of Alaska, for termination of the lease.

XIV. Survey

Upon receiving an Early Authorization from DNR, the Applicant shall conduct an as-built survey acceptable to the standards of the DMLW Survey Section prior to the expiration of the Grantee's Entry Authorization. The Applicant will be responsible for all costs associated with conducting the survey.

XV. Fees/Appraisal

Fee Narrative: 11 AAC 05.010

As required by 11 AAC 05.010(e)(11) the fee for this non-exclusive private easement under AS 38.05.850 will be an annual fee of \$100 per acre.

XVI. Term

EA Term: Three years, or shorter if the easement is issued prior to the EA expiration.

Easement Term: Thirty years, a term concurrent with the Applicant's FERC license, or shorter if the easement is no longer used for the requested purpose.

XVII. Economic Benefit and Development of State Resources

AS 38.05.850(a) requires that in the granting of easements DNR give preference to the use of the land that will be of greatest economic benefit to the state and the development of its resources.

XVIII. Discussion

AS 38.05.850(a) requires that preference be given to easements that will be of greatest economic benefit to the state. Here, the easement is to widen an existing 40' right-of-way reserved by the Federal Government for power project 2307 by an additional 60' to facilitate line maintenance and the realignment of poles necessitated by bank erosion along Sheep Creek. When initially constructed in 1915, the subject land was Federally owned and managed. The subject land was tentatively approved for transfer to the State in 1992 under AA-71140 as a community grant selection. That grant reserved the existing 40' right of way for the transmission line for the Applicant. For over 100 years the transmission line has served the economic interests of the State. This application to widen the Applicant's existing federally reserved right-of-way to include 30' both sides of centerline is the first opportunity that the state has had to issue an easement for the powerline. The states easement would provide the Applicant with additional space to maintain the line, and help facilitate an uninterrupted power supply to the City and Borough of Juneau.

While the Applicant does not plan to remove trees from state land, maintenance of the line may require trimming or removing trees. If any commercial-grade trees are removed from state land

during the term of the entry authorization or easement, Applicant will be required to notify the Alaska Division of Forestry.

The Sheep Creek Basin has significant cultural and historical importance. It is home to numerous sites compiled in the Alaska Heritage Resources Survey (AHRs), including the subject powerline. The Alaska State Historic Preservation Office (SHPO) has commented on the Applicant's Historic Preservation Management Plan (HPMP), which is required by FERC under Section 106 of the National Historic Preservation Act. Additionally, the applicant's HPMP will require management of cultural resources in accordance with the Alaska Historic Preservation Act. At the end of the easement term, DMLW will consult with SHPO to evaluate the Applicant's plan for either reclaiming or preserving structures in the easement area.

With these considerations, the Southeast Regional Office of the DNR Division of Mining, Land and Water plans to issue the Applicant a private non-exclusive easement for approximately 12.5 acres along the existing transmission line in Sheep Creek basin in the Copper River Meridian, Township 41 South, Range 68 East, Sections 32, 33, and 34.

XIV. Recommendation

Authorization Type and Term

Pursuant to AS 38.05.850, the Southeast Region Department of Natural Resources, Division of Mining, Land and Water recommends the issuance of a 30-year private nonexclusive easement to the Applicant for maintaining an above ground transmission line.

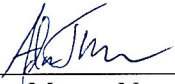
Special Stipulations and the terms and conditions set forth therein (Attachment 2).

This is a preliminary decision and subsequent public review may result in changes or disapproval of the proposed action altogether.

Terms and Conditions

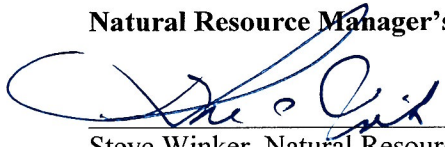
1. Public access shall be maintained, but for temporary restrictions required for public safety.
2. Applicant shall contact and inform Alaska Division of Forestry, Juneau Office, if any commercial grade trees (hemlock or spruce trees, 8" or more in diameter) are to be removed from state land (more than 20' from centerline).
3. The permit and entry authorization shall contain modifications and/or provisions that are justified by public comment.
4. The grantee shall restore the easement area to a good and marketable condition, acceptable to the commissioner. Reclamation of the site may require removal of poles and towers, or preparing towers and poles for historic preservation, upon expiration or termination of the easement. A future decision will determine the extent of required reclamation.

- a. In order to ensure appropriate site restoration, two years before the expiration of the easement, the Applicant shall apply to DNR for a new easement for the same site, or submit to DNR a site restoration and or preservation plan and a commensurate performance guarantee.
- b. The performance guarantee amount may be adjusted during the term of the permit.


Adam Moser, Natural Resource Specialist

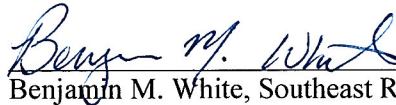
07/21/17
Date

Natural Resource Manager's Concurrence


Steve Winker, Natural Resource Manager

7-21-2017
Date

Regional Manager's Decision


Benjamin M. White, Southeast Regional Manager

July 21, 2017
Date

Attachments: A – Development Plan
B – Easement and Stipulations
C – Entry Authorization

PUBLIC NOTICE, FINAL DECISION AND APPEAL PROCESS:

In accordance with the provisions of AS 38.05.945, public notice seeking comments on this preliminary decision will be given to: City and Borough of Juneau; Sealaska Corporation; Goldbelt, Inc.; Central Council of the Tlingit and Haida Indian Tribes; Douglas Indian Association; and those parties that have previously requested written notice. We will also request that the Juneau Post Office post the notice. It will be available on the internet as the Alaska Online Public Notice website, which can be accessed at www.state.ak.us.

The public is invited to comment on this preliminary decision. Comments must be received in writing by the DNR Division of Mining, Land & Water by mail at 400 Willoughby Avenue, P.O. Box 111020, Juneau, AK 99811-1020; by fax at (907) 465-3886; or by electronic mail to adam.moser@alaska.gov by the close of business on **August 21, 2017** to ensure consideration. Please include your mailing address and telephone contact. In order to establish appeal rights regarding this decision, you are required by law to meaningfully participate in the decision process by commenting on the decision, in writing, prior to the comment deadline. Following the deadline, all timely written comments will be considered, and DNR may modify this decision based on public comments received.

If DNR determines that public comments in response to this notice indicate the need for significant changes to the decision, additional public notice will be given. If no significant changes are required, the preliminary decision, after any necessary minor changes, will be issued as a final decision. A copy of the final decision, along with instructions on filing an appeal, will be sent to all persons who comment on the preliminary decision. Persons who do not submit written comments during the comment period will have no legal right to appeal the final decision.

Attachment A

Development Plan

*Annex Creek Hydroelectric Project
(FERC Project No. 2307)*

Alaska Electric Light and Power Company

Juneau, Alaska

November 18, 2015

1. ANNEX CREEK HISTORICAL USE

In 1912 through 1915, the Gastineau Mining Company constructed first the Salmon Creek (Figure 1-1) and then the Annex Creek Project facilities. By 1936, all the mining companies and their electrical generating facilities in the Juneau area had been amalgamated into the Alaska Juneau Gold Mining Company (AJ Industries). As AEL&P's load continued to grow, it met its additional energy requirements with power purchased from AJ Industries. When the mines were permanently closed in 1944, AEL&P became the sole purchaser of AJ Industries' hydroelectric energy. In 1963, the Federal Power Commission (FPC) issued a license to AJ Industries for continued operation of the Project on the condition that both Annex Creek and Salmon Creek dams be rehabilitated. In 1973, AEL&P purchased AJ Industries' hydroelectric generating facilities and transmission system (the existing Project facilities), and the operating license was transferred to AEL&P. AEL&P applied for a new license for the Project in 1985, and FERC issued a 30-year license in 1988. AEL&P is in the process of applying for a new license that will take effect in 2018 to continue operation of the Annex Creek Project. No new construction is planned.



Figure 1. Annex Creek Transmission Line Under Construction

2. PROJECT FEATURES ON STATE LANDS

The majority of the Annex Creek Project is located within the Tongass National Forest. The project includes a twelve and one-half miles of 23-kilovolt (kV) transmission line which runs from the Annex Creek Powerhouse to Thane Substation, which is located on the Juneau road system approximately 4 miles south of downtown Juneau. This transmission line crosses property owned by the State of Alaska as shown in the enclosed drawing. The transmission line in this section is overhead construction and uses a mix of wood and steel lattice-type structures.

No new construction is planned, this easement is for operations and maintenance purposes only.

Feature	Meridian	Township	Range	Section
Transmission Line	Copper River	041S	068E	27, 32, 33, 34



Transmission Line – Sheep Creek Basin

NOTES

- 1. SECTION LINES ARE UNSURVEYED AND REPRESENT PROJECTIONS MADE BY BLM.
- 2. POWER TUNNEL LOCATION WAS PLACED USING EXHIBIT B OF THE ALASKA GASTINEAU MNG. CO. APPLICATION FOR FINAL POWER PERMIT DATED MARCH 1916. THE POWER TUNNEL WAS NOT SURVEYED OR FIELD LOCATED.
- 3. FOREST SERVICE BOUNDARY LINES AS SHOWN WERE POSITIONED USING GIS DATA DOWNLOADED FROM THE USDA FOREST SERVICE MAP VIEWER. THE BOUNDARY WAS NOT SURVEYED OR FIELD LOCATED.
- 4. PROPERTY BOUNDARY LINES AS SHOWN WERE POSITIONED USING EXISTING GIS DATA AND OR FIELD SURVEY DATA.
- 5. REFERENCE POINT COORDINATES ARE: NAD83(2011) ALASKA STATE PLANE COORDINATES, ZONE 1, IN US FEET.
- 6. THE PROJECT IS LOCATED WITHIN THE CITY AND BOROUGH OF JUNEAU ALASKA.

SECTION 32

SECTION 33

NON FEDERAL LANDS SUBJECT TO
POWERSITE RESERVATION: 24.06 ACRES
ADDITIONAL EASEMENT: 12.54 ACRES

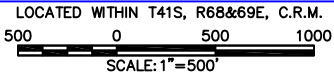
TOWNSHIP 41 SOUTH
TOWNSHIP 42 SOUTH

LEGEND

- PROJECT BOUNDARY
- TRANSMISSION LINE
- STATE OF ALASKA LAND OWNERSHIP WITHIN PROJECT BOUNDARY
- PRIVATE LANDS
- BODY OF WATER

EXHIBIT
ANNEX CREEK TRANSMISSION
LINE CORRIDOR OVER STATE LANDS

TRANSMISSION LINE CORRIDOR





ADL 108448
Alaska Electric Light & Power

Private Non-Exclusive Easement

THIS EASEMENT is granted this _____ day of _____, 20____ by and between the STATE OF ALASKA, acting by and through the **Department of Natural Resources, Division of Mining, Land and Water**, Southeast Regional Office, hereinafter referred to as the Grantor, whose address is PO Box 11120, Juneau, AK 99811-1020 and Alaska Electric Light & Power whose address is 5601 Tongard Court, Juneau, AK 99801, is hereinafter referred to as the Grantee.

WHEREAS, it is understood and agreed that, as a condition to the granting of said easement, this easement shall be used for no purpose other than The maintenance of an electrical transmission line over and across portions of the following described state lands:

Within the **Copper River Meridian, Township 41 South, Range 68 East, Sections 32, 33, and 34 for a combined total of approximately 12.5 acres of land.**

IN accordance with the provisions of AS 38.05.850, and the rules and regulations promulgated thereunder, the grantor hereby reserves a private non-exclusive easement over and across the above described state land within the **Juneau Recording District** as shown on the attached development plan, and identified as Attachment B revealing the easement location granted herein.

This easement shall terminate at the end of the stated 30-year term or when the Grantor determines that the easement is abandoned, is no longer necessary, is no longer in use for the purpose(s) authorized, or is revoked as a result of violations of the terms, conditions and stipulations of this easement.

The Grantee and entry persons who may exercise the rights and privileges granted by this document shall comply with all regulations now in effect or as hereafter established by the Division of Mining, Land & Water, all other federal, state or local laws, regulations or ordinances applicable to the area herein granted. In addition, the Grantee shall maintain the premise in a neat and orderly manner and shall adopt and apply such safety measures as shall be necessary, proper and prudent with respect to the use to which the land is subjected.

In the event that the easement granted shall in any manner conflict with or overlap a previously granted easement the Grantor recognizes that the easement granted herein shall be used in such a manner as not to interfere with the peaceful use and enjoyment of the previously issued easement or right-of-way.

The State of Alaska shall be forever wholly absolved from any liability for damages which might result from any claims, suits, loss, liability and expense for injury to or death of persons and damage to or loss of property arising out of or in connection with this easement.

NOW THEREFORE, in accordance with the provisions of AS 38.05.850 and the rules and regulations promulgated thereunder and in accordance with the conditions and stipulations of this easement including all documents that are incorporated by reference, the Grantee is authorized to operate and maintain said easement.

IN WITNESS WHEREOF, the Grantor has signed this easement on the day and year first above written.

[Signature Page Follows]

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
GRANTOR

Benjamin M. White
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 Benjamin M. White, Southeast Regional Manager of
the Department of Natural Resources, Division of Mining Land and Water, known by
me to be the person named in and who executed said document and acknowledged
voluntarily signing the same.

Notary Public in and for the State of Alaska

My Commission expires: _____

GRANTEE

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.

Notary Public in and for the State of Alaska

My Commission expires: _____

FEE: THIS IS OFFICIAL STATE BUSINESS, NO CHARGE

RETURN TO: Lands Section, DMLW, DNR
 400 Willoughby Ave. 4th Floor
 Juneau, AK 99811

Attachment A – Stipulations

I. Authorized Officer

The Authorized Officer (AO) for the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW) is the Southeast Regional Manager or designee. The AO may be contacted at 400 Willoughby Avenue, Juneau, AK 99811, or (907) 465 3400.

II. Annual Fee

The Grantee shall pay an annual rental fee of \$100 per acre, with total acreage based on an approved as-built survey. This fee is subject to adjustment based on changes in DNR's fee regulations.

III. Indemnification

Grantee assumes all responsibility, risk and liability for its activities and those of its employees, agents, contractors, subcontractors, licensees, or invitees, directly or indirectly related to this authorization, including environmental and hazardous substance risk and liability, whether accruing during or after the term of this authorization. Grantee shall defend, indemnify, and hold harmless the State of Alaska, its agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatever kind or nature, including all attorney's fees and litigation costs, arising out of, in connection with, or incident to any act or omission by Grantee, its employees, agents, contractors, subcontractors, licensees, or invitees, unless the proximate cause of the injury or damage is the sole negligence or willful misconduct of the State or a person acting on the State's behalf. Within 15 days, Grantee shall accept any such cause, action or proceeding upon tender by the State. This indemnification shall survive the termination of the authorization.

IV. Authorized Use

Improvements shall be consolidated within smallest practicable area, not to exceed the total acreage explicitly approved on page 1 of this authorization. Only those uses and temporary improvements depicted on Attachment A are allowed, unless prior Division approval is obtained for additional improvements. Use of the site for any unapproved purpose is prohibited. Grantee, its agents and employees are responsible for accurately siting authorized uses and structures within the authorization area. Any unauthorized use of State lands outside the authorization area, either by Grantee or by its agents or employees, is strictly prohibited. Any proposed revisions to the development plan/plan of operations must be approved in writing by the AO before the change in use or development occurs.

The authorized area shall be maintained in a neat, clean, and safe condition, free of any debris or litter. Grantee will, at its own expense, during the term of the authorization: 1. Maintain the authorized area and any improvements in good repair, 2. Promptly repair or remedy any damage to the authorized area, and 3. Promptly compensate the owner for any damage to or destruction of property within the authorized area for which Grantee is liable.

V. Assignment

This authorization may not be transferred or assigned without the prior written consent of the AO.

VI. Tree Removal

Grantee shall contact and inform Alaska Division of Forestry, Juneau Office, if any commercial grade trees (hemlock or spruce trees, 8" or more in diameter) are to be removed from state land (more than 20' from centerline).

VII. 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 (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered within the authorization area, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation shall be notified immediately at (907) 269-8721.

VIII. Public Access

All operations must be conducted in a manner that will ensure minimum conflict with other users of the area. There shall be no unreasonable interference with free public use of state lands.

IX. Reservation of Rights

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 AO reserves the right to modify these stipulations or use additional stipulations as deemed necessary. Grantee will be notified in writing prior to the implementation of any change in the terms or conditions exercised by the AO under this provision. Grantee will be afforded the opportunity to review and comment regarding the effect of any proposed change to this authorization. Failure of the Grantee to notify the AO of any change to current officers or addresses shall not be sufficient grounds to invalidate the AO's compliance with this notification process.

X. Survey

The Grantee shall submit an as-built survey acceptable to the standards of the DNR Survey Section prior to the expiration of the Grantee's Entry Authorization. Please contact the DMLW Survey Section at 907-269-8523 to obtain survey instructions within 30 days of the execution of an Entry Authorization. A survey instruction fee may be required in accordance with 11 AAC 05.010(a)(13). The Grantee is required to submit a preliminary draft as-built survey prior to the expiration of the Entry 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.

XI. Insurance

Pursuant to 11 AAC 96.065 the Grantee shall secure or purchase at its own expense, and maintain in force at all times during the term of this authorization, the following policies of insurance to protect both the Grantee and the Grantor (the State, its officers, agents and employees). If the Grantee's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the AO prior to the issuance of this authorization and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. The Grantee must provide for a 60-day prior notice to the State before they cancel, not renew or make material changes to conditions to the policy. Failure to furnish satisfactory evidence of insurance, or lapse of the policy, are material breaches of this authorization and shall be grounds, at the option of the State, for termination of the authorization. All insurance policies shall comply with, and be issued by, insurers licensed to transact the business of insurance under Alaska Statute, Title 21. The policy shall be written on an "occurrence" form and shall not be written as a "claims-made" form unless specifically reviewed and agreed to by the Division of Risk Management, Department of Administration. The State must be named as an additional named insured on the policy with respect to the operations of the Grantee on or in conjunction with the authorized premises, referred to as Annex Creek Hydropower Transmission Line (ADL 108448).

In the event the Grantee becomes aware of a claim against any of its liability coverage, the Grantee shall notify, and provide documentation and full disclosure of the claim to the AO within 20 days.

Commercial General Liability Insurance: Such policy shall have minimum coverage limits of \$1,000,000 combined single limit per occurrence.

Workers' Compensation Insurance: The applicant shall provide and maintain, for all its employees, Workers' Compensation Insurance as required by AS 23.30.045. Where applicable, coverage must comply with any other statutory obligations, whether Federal (i.e., U.S.L.&H., or, Jones Act) or other state laws in which employees are engaged in work on the leased premises. The insurance policy must contain a waiver of subrogation clause in favor of the State of Alaska.

XII. Fuel and Hazardous Substances

The use of hazardous substances, including fuels, by the Grantee must be done in accordance with existing federal, state and local laws, regulations and ordinances.

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.

XIII. Spill Notification

The Grantee shall immediately notify Alaska Department of Environmental Conservation by telephone, and immediately afterwards send Alaska Department of Environmental Conservation a written notice by facsimile, hand delivery, or first class mail, informing Alaska Department of Environmental Conservation of: any unauthorized discharges of oil to water, any discharge of hazardous substances other than oil; and any discharge or cumulative discharge of oil greater than 55 gallons solely to land and outside an impermeable containment area. 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, and immediately afterwards send Alaska Department of Environmental Conservation a written notice by facsimile, hand delivery, or first class mail. Any discharge of oil, including a cumulative discharge, solely to land greater than one gallon up to 10 gallons must be reported in writing on a monthly basis. The posting of information requirements of 18 AAC75.305 shall be met. The provisions of 18 AAC 75.310 (Scope and Duration of Initial Response Actions) and other reporting requirements of 18 AAC 75.300 – 18 AAC 75.396 also apply. The Grantee shall supply Alaska Department of Environmental Conservation with all follow-up incident reports. Notification of a discharge must be made to the nearest Alaska Department of Environmental Conservation Area Response Team during working hours: Juneau (907) 465-5340, fax (907) 465-2237. The Alaska Department of Environmental Conservation oil spill report number outside normal business hours is (800) 478-9300. The Grantee shall supply Alaska Department of Environmental Conservation with all follow-up incident reports. All fires and explosions must also be reported. The DNR 24-hour report number is (907) 451-2678; the fax number is (907) 451-2751. DNR or the appropriate land manager and Alaska Department of Environmental Conservation shall be supplied with all follow-up incident reports.

XIV. Waste Disposal

All waste/debris generated from activities conducted under this easement shall be removed as required by State and Federal law on a routine and timely basis. Additionally, easement area shall be free of waste/debris on or before termination or expiration of this Easement.

XV. Inspections

Authorized representatives of the State of Alaska shall have reasonable access to the subject parcel for purposes of inspection and may inspect the authorized area at any time without notice.

The Grantee may be charged fees under 11 AAC 05.010(a)(7)(M) for routine inspections of the subject parcel, inspections concerning non-compliance, and a final close-out inspection.

For purposes of information and review, the AO at any time during normal business hours, may require the Grantee to furnish data related to preconstruction or construction activities undertaken in connection with the project. The Grantee shall furnish the required data as soon as possible or as otherwise required under the terms of the authorization.

XVI. Project Completion and Site Restoration

Three years before the expiration of the easement, Grantee shall apply to DNR for an extension or a new easement for the same site, or post a commensurate performance guaranty and submit to DNR a site restoration plan.

XVII. 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.

XVIII. Violations

Pursuant to 11 AAC 96.145, a person who violates a provision of this authorization is subject to any action available to the DNR for enforcement and remedies, including revocation of the authorization, civil action for forcible entry and detainer, ejectment, trespass, damages, and associated costs, or arrest and prosecution for criminal trespass in the second degree. The DNR may seek damages available under a civil action, including restoration damages, compensatory damages, and treble damages under AS 09.45.730 or 09.45.735 for violations involving, gathering geotechnical data, or taking mineral resources.

XIX. Choice of Law and Jurisdiction

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.



Entry Authorization

ADL 108448

Alaska Electric Light & Power, herein known as the Grantee, is issued this Entry Authorization authorizing the use of state land within:

Legal Description:

Copper River Meridian, Township 41 South, Range 68 East, Sections 32, 33, and 34 for a combined total of approximately 12.5 acres of land.

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

To maintain an existing transmission line that runs from the Annex Creek hydropower facility through Sheep Creek Valley.

Prior to issuing the final Easement, and during the EA period, the Grantee shall conduct and submit an as-built survey to DNR's standards for approval.

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

This Entry Authorization is issued subject to the following:

- Payment of the annual use fee in the amount of \$1300 (one thousand three hundred dollars) due on or before the annual anniversary date
- Proof of insurance as described in the stipulations to the Easement.

The non-receipt of a courtesy billing notice does not relieve the Grantee from the responsibility of paying fees on or before the due date.

All activities shall be conducted in accordance with the stipulations provided in Attachment A of the draft Easement.

DNR has the authority to implement and enforce these conditions under AS 38.05.850. Any correspondence on this authorization may be directed to the Department of Natural Resources, Division of Mining, Land and Water, Southeast Region, 400 Willoughby Avenue, Juneau AK, 99811-1020, Phone: (907) 465 3400.

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
---	-------	------

Grantee's Address	City	State	Zip
-------------------	------	-------	-----

Contact Person	Home Phone	Work Phone
----------------	------------	------------

Signature of Authorized State Representative	Title	Date
--	-------	------