STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
Northern Regional Lands Office

Regional Manager's Decision

ADL 420811
MTA Communications, LLC
Private, Non-Exclusive Easement
AS 38.05.850

REQUESTED ACTION
The Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Northern Region Office (NRO) has received an application from MTA Communications, LLC. (MTA), for the authorization to operate and maintain a preexisting fiber optic cable (FOC). The applicant has requested a private, non-exclusive easement in perpetuity.

RECOMMENDED ACTION
DMLW proposes to issue a private, non-exclusive easement under the casefile ADL 420811 for a period of 30 years.

SCOPE OF DECISION
The scope of this decision is to determine if it is in the State's interest to issue a private, non-exclusive easement on state land to MTA for the operation and maintenance of a FOC.

STATUTORY AUTHORITY
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 here-in, the 2015 Eastern Tanana Area Plan and other classification references described herein, the casefile for the application serialized by DNR as ADL 420811, and the easement application ADL 420815 from Golden Valley Electric Association (GVEA) to authorize use and maintenance of the same right-of-way for electrical line use.

LOCATION INFORMATION

Geographic Location
Located in Creamer's Field Waterfowl Refuge near the Steese Highway, Fairbanks North Star Borough (FNSB) PAN# 199982. GVEA submitted an application (ADL 420815) requesting an easement authorization for a powerline in this same location.

Meridian, Township, Range, Section
Fairbanks Meridian, Township 1 North, Range 1 West, Section 35

Dimensions
Width: 30 feet Approximate Length: 2539.44 feet Approximate Acreage: 1.75

Other Land Information
Municipality: City of Fairbanks
Borough: FNSB
Regional Corporation: Doyon Ltd

See attached map.

TITLE
The W½ and W½ E½ of Section 35 of F001N001W was deeded to the State on November 30, 1964, recorded in Fairbanks Book 172, Page 179 (serialized as OSL 311) with no apparent reservations.

THIRD PARTY INTERESTS
This parcel of land is within an area legislatively designated as the Creamer's Field Migratory Waterfowl Refuge (Refuge) (AS 16.20.039). Coordination with the Alaska Department of Fish & Game (ADF&G) indicates that DNR has the authority to issue easements within the Refuge and is the appropriate agency to do so. ADF&G has no concerns with the proposed action.

PLANNING & CLASSIFICATION
This requested area is located within the Eastern Tanana Area Plan (ETAP), Unit L-02. Lands within this unit are legislatively designated as the Refuge. The management of this unit must remain consistent with the purposes of the Refuge and with the management plan under AS 16.20.039(d). The primary purpose of this Refuge is to protect and enhance habitat for migratory birds with special emphasis on waterfowl. Issuance of the proposed easement is not inconsistent with the primary purpose of the Refuge.

ACCESS
The FOC infrastructure was placed on existing GVEA electrical poles and will be accessed via this easement.

BACKGROUND
On February 16, 2017 MTA, submitted an application requesting authorization to operate and maintain a preexisting FOC located within Creamer's Field, a Legislatively Designated Area primarily managed by ADF&G. GVEA originally installed FOC within a powerline easement, and the FOC was then sold to MTA in 2016. The FOC was installed in 2000, approximately. In consultation with ADF&G, it was determined that DNR would be the appropriate agency to authorize this FOC easement.

PUBLIC NOTICE & AGENCY REVIEW
Agency Review Summary
On March 31, 2017, a request for agency comment was sent to:
Alaska DNR, Mining Section
Alaska DNR, Reality Services

ADF&G Habitat
FNSB
U.S. Fish and Wildlife Services
U.S. Army Corps of Engineers
Alaska Department of Transportation & Public Facilities (DOT&PF)

Agency Review Comment and Response
ADF&G: No objection to this easement authorization.

Public Notice Summary
Public Notice was posted to the DNR Online Public Notice webpage on March 31, 2017 for 30 days.

Public Notice Comment and Response
No comments were received in response to this notice.

ENVIRONMENTAL CONSIDERATIONS
The environmental risk for the proposed activity is determined to be minimal. Access and maintenance as described in the application should present only the minimal risk of leaks from vehicles used to access the easement. These risks may be minimized by requirements described in the stipulations attached to the easement and associated Entry Authorization, including *Fuel and Hazardous Substances, Notification of Discharge, Removal of Improvements and Site Restoration, and Operation of Vehicles.*

ECONOMIC BENEFIT AND DEVELOPMENT OF STATE RESOURCES
Per 38.05.850(a), the DNR must consider whether easements will provide direct and/or indirect benefits to the State, and whether it will encourage development of the State's resources. Granting a private non-exclusive easement for a FOC in the proposed location will provide better telecommunication connectivity for the public.

DISCUSSION
In adjudicating an easement, DMLW seeks to facilitate development, conservation, and enhancement of state resources for present and future Alaskans, while minimizing disturbance to vegetation, hydrology and topography of the area that may impair water quality and soil stability.

As the FOC infrastructure was installed within an existing easement on existing poles, DNR did not consider alternatives when adjudicating this decision. The presence of the FOC infrastructure provides the benefit of improved communications within the service area. The alternative of compelling MTA to remove the infrastructure would not provide a meaningful benefit to the State. By authorizing the added FOC, DMLW would be able to document its existence and collect fees on the previously unauthorized infrastructure. Therefore, authorization of the FOC was the only course of action considered.

Fiber optic is currently considered to be a public utility if operating within a company's Certificate of Public Convenience and Necessity (CPCN) service area. If MTA expends their service area to include this area and MTA continues to maintain a CPCN for this region, it would

make this activity eligible for conversion to a public utility easement. To eliminate the need to do an additional decision in the future, this easement may be converted into a public utility easement upon receipt of an updated CPCN from MTA which includes the subject area or a change in the regulatory interpretation.

PERFORMANCE GUARANTY

A performance guaranty is intended to incentivize performance of the conditions of the entry authorization and easement and provide a mechanism for the State to ensure that the applicant shares in the financial burden in the event of noncompliance (including fee payment, survey, appraisal, etc.), restoration (interim and final), and any associated costs after termination or expiration of the easement.

History of Compliance: This applicant has no open trespass casefiles.

Performance Guaranty Narrative: No performance guarantee will be required as the FOC is already in place.

INSURANCE

The applicant is required to submit proof of insurance in an amount the insurance company determines necessary to protect both the State and the applicant from risks associated with the planned activities under the easement for ADL 420811. The applicant will be responsible for maintaining the necessary insurance during the term of the easement. The insurance may be adjusted to reflect updates and changes in the associated project and the applicant may be required to furnish additional insurance if DMLW determines there is additional risk to the State. A certificate of insurance listing the State of Alaska, Department of Natural Resources as an additional insured on the policy, or other insurance acceptable to the State, must be submitted to DMLW prior to entry on State land and must be maintained throughout the term of the easement.

FEES

Fiber Optic Cables are authorized with one of two authorization types; a public utility easement (including installation within an existing easement), or a private, non-exclusive easement. If the applicant has a CPCN for telecom activities, and the applicant is operating within their designated service area, an FOC would be authorized through a public utility easement. If the applicant does not have a telecom related CPCN for the proposed location, the FOC is authorized with a private non-exclusive easement. MTA does not have a CPCN for the Fairbanks area. Per 11 AAC 05.070 (d)(2)(A)(i), a private non-exclusive easement has an annual fee of $480 for up to 2 acres of state land, and $240 per additional acre.

The final survey indicates that the easement is 1.75 acres, therefore, **the annual fee will be $480**. The fees shall accrue starting at the date of application.

Back-fees

Although utilities are now required to coordinate with DNR prior to placement, past practice has been to allow qualifying utilities to merely coordinate with the easement Grantee when placing additional infrastructure within a utility easement. These lines were originally installed by GVEA and its associated business, Alasconnect. As of 1999, both entities were operating under

various CPCNs, and all lines were installed within existing public utility easements. Because the FOCs were installed by a qualifying entity operating within their service area (CPCN 600) within an existing public utility easement, no back fees prior to the date of application for MTA are due.

ENTRY AUTHORIZATION

Easement Term: 30 years from the effective date of the decision, or until platted via local platting authority.

Term Discussion: The term of this private, non-exclusive easement shall be for a period of 30 years from the effective date of the decision; however, if an easement authorizing the operation and maintenance of the FOC is platted and dedicated by the local platting authority, that portion of the easement shall terminate. Although the applicant requested an easement in perpetuity, this is not consistent with private non-exclusive easements, which are typically term-limited. Should this easement be converted into a public utility easement, the term would then be until no longer needed.

Recommendation

Based on information provided by the applicant, inter-agency review and review of relevant planning documents, statutes, and regulations related to this application, it recommended DNR issue this easement to the MTA pursuant to AS 38.05.850. During the term of the easement, periodic inspections may be conducted, at the discretion of the DNR, to ensure compliance and that no unexpected environmental disturbance or degradation is occurring. The State of Alaska reserves the right to issue other compatible uses within this same area.

Jaclyn Cheek — Date: 10/17/2019

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 the 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. DNR 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.

for Jeanne Proulx — Date: 10/17/19

Regional Manager

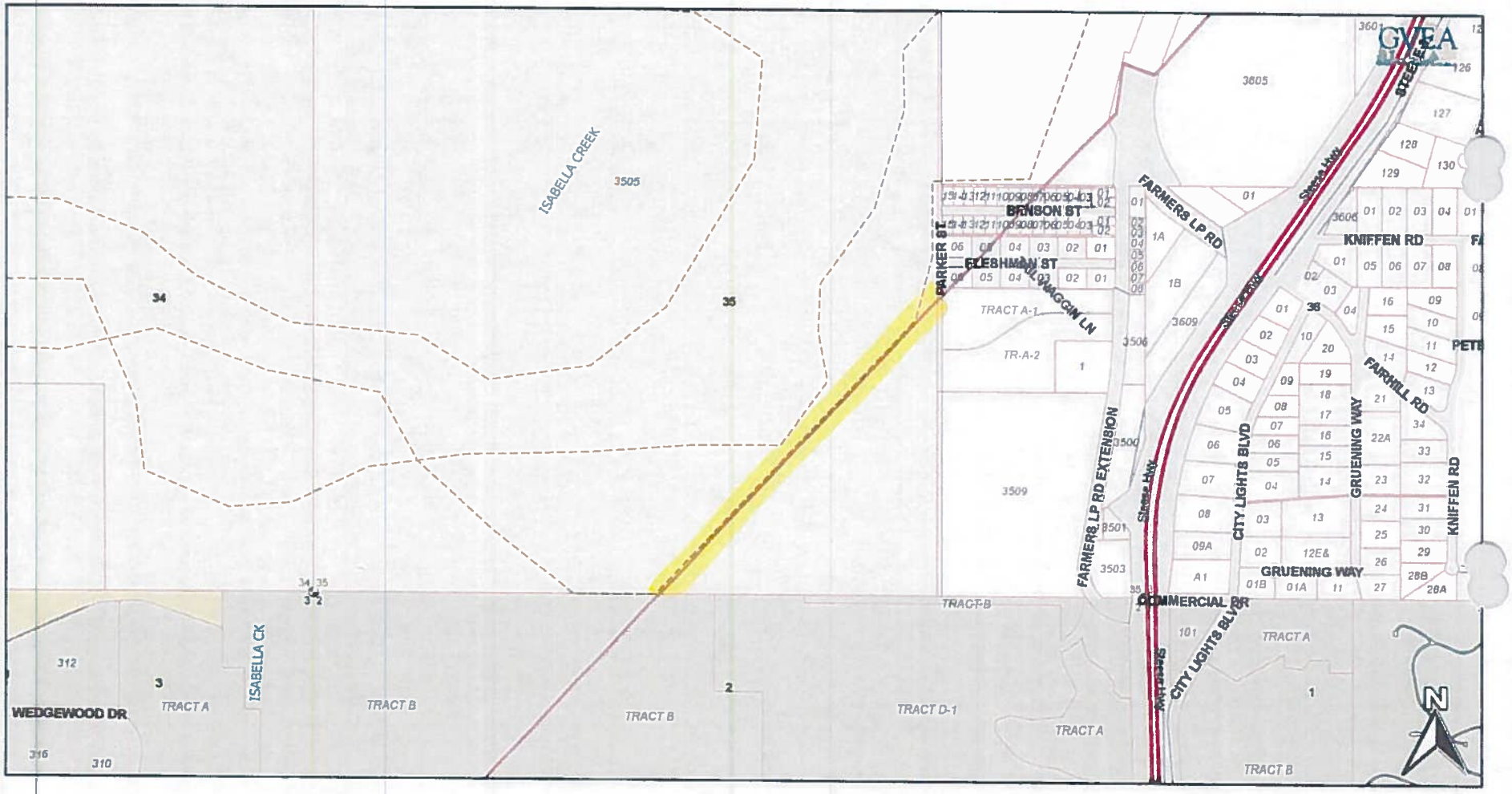
ATTACHMENTS

- Easement
- Map

A person affected by this decision may appeal it in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of "issuance" of this decision, as defined in 11 AAC 02.040(c) and (d) and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-(907) 269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. Under 11 AAC 02.030, appeals and requests for reconsideration filed under 11 AAC 02 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) and (b).

If no appeal is filed by the appeal deadline, this decision becomes a final administrative order and decision of the department on the 31st calendar day after issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to the Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

GVEA AIMS - cal



200 m
600 ft

Jan/27/2017
Scale 1:20309

Township-Range: 01N001W
System Map: 4-0101f

The materials available from the GVEA AIMS map are for informational purposes only and do not constitute a legal document.