

**STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
Northern Regional Lands Office**

**Regional Manager's Decision**

ADL 420812  
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 preexisting fiber optic cables (FOC) in two locations. 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 420812 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 for two sections of a right-of-way on state lands to MTA for the operation and maintenance of 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 (ETAP) and other classification references described herein, Department of Transportation and Public Facilities (DOT&PF) Interagency Land Management Agreement (ILMA) ADL 30431, Golden Valley Electric Association (GVEA) public easement ADL 74193, and the casefile for this application serialized by DNR as ADL 420812.

**LOCATION INFORMATION**

**Geographic Location**

- a) Located off 19th Avenue in Fairbanks, Track A of ASLS No. 80-64 (Plat 80-149, Fairbanks Recording District).
- b) Located in North Pole near Flint Hills and North Pole High School.

**Meridian, Township, Range, Section**

- a) Fairbanks Meridian, Township 1 South, Range 1 West, Section 16, NE ¼, NW ¼;

- b) Fairbanks Meridian, Township 2 South, Range 2 East, Section 16, NW ¼.

### **Dimensions**

- a) F001S001W Section 16  
Width: 30 feet      Approximate Length: 1209.31 feet      Approximate Acreage: 0.83
- b) F002S002E Section 16  
Width: 30 feet      Approximate Length: 892.39 feet      Approximate Acreage: 0.62

### **Other Land Information**

Municipality: City of Fairbanks  
City of North Pole  
Fairbanks North Star Borough (FNSB)  
Regional Corporation: Doyon Ltd

See attached map.

### **TITLE**

- a) Patented to the State via PA 1232157 on June 6, 1963 with a reservation for a right-of-way for railroads, telegraph, and telephone lines constructed by the United States. Patent subject to any vested and accrued water rights and associated ditches and reservoirs as well as ditches and canals constructed by the United States. State title is serialized by DNR casefile SCH 167.
- b) Patented to the State under PA 1228599 on September 13, 1962 with a reservation for a right-of-way for railroads, telegraph, and telephone lines constructed by the United States. Patent subject to any vested and accrued water rights and associated ditches and reservoirs as well as ditches and canals constructed by the United States. Certain telephone lines and pipelines constructed by the United States in the NE¼ were exempted from patent. State title is serialized by DNR casefile SCH 155.

### **THIRD PARTY INTERESTS**

- a) This parcel of land is an ILMA with the DOT&PF (ADL 30431).
- b) GVEA holds an easement authorization for the electric lines, ADL 74193. There is an additional easement issued to Fairbanks North Star Borough under ADL 60051 for a flood control project.

### **PLANNING & CLASSIFICATION**

- a) The subject area is within the plan boundaries of ETAP but has no specific unit designation. Per chapter four of ETAP, if a parcel is in or is immediately adjacent to an existing community or past state land offering, the designation of Settlement and classification of Settlement Land apply. Such land can be considered for disposal use unless it is appropriate as a site(s) for schools, material sites roads, parks or other similar public use. Although this decision does not constitute a designation of the land and classification is not required for projects such as this one (minor access utility lines), it is consistent with any future designation.
- b) The subject area is within the F-84 unit of ETAP. Lands within this unit are designated as habitat. Development in this unit would be inappropriate except for certain types of utilities,

communication facilities, roads, and similar types of projects providing a general public benefit. As this project is authorizing communications infrastructure, it is considered within the management intent of the unit.

## **ACCESS**

The FOC infrastructure was placed on existing GVEA electrical poles and will be accessed via these utility easements.

## **BACKGROUND**

On February 16, 2017 MTA, submitted an application requesting authorization to operate and maintain preexisting FOCs in two locations. GVEA originally installed the FOC within powerline easements, and the FOC was then sold to MTA in 2016. The FOC in FM001S001W Section 16 was installed in 2001 while the FOC in FM002S002E Section 16 was installed in 1999, approximately.

## **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  
Alaska Department of Fish and Game (ADF&G), Habitat  
FNSB  
U.S. Fish and Wildlife Service  
U.S. Army Corps of Engineers  
DOT&PF

An additional request for comments was sent to the FNSB on September 27, 2019 to ensure that they had no concerns with the proposed easement where it crossed through their existing authorization.

### **Agency Review Comment and Response**

ADF&G: No objection to this easement authorization.

FNSB: No objections if the line is to remain on existing poles. To maintain our levee certification, we ask that the applicant coordinate with FNSB before any excavation work so that we in turn can coordinate with the US Army Corps of Engineers.

DMLW Response: Per easement stipulations such as “Development Plan”, development within the easement is limited to activities described in the approved development plan. The application submitted to DMLW only included the aerial installation, therefore, any excavation would have to first be approved by DMLW. DMLW would ensure that the grantee coordinated with the FNSB.

## **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 this easement 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 locations 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 existing easements 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 expands 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 FOCs are 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 420812. 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 Certificate of Public Convenience and Necessity 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 shows the area of the easement to be 0.83 acres +.062 acres=1.45 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 in one or more of these locations 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.

### **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

10/17/2019  
\_\_\_\_\_  
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 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.

  
\_\_\_\_\_  
Jeanne Proulx  
Regional Manager

10/17/19  
\_\_\_\_\_  
Date

### **ATTACHMENTS**

- Easements
- 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

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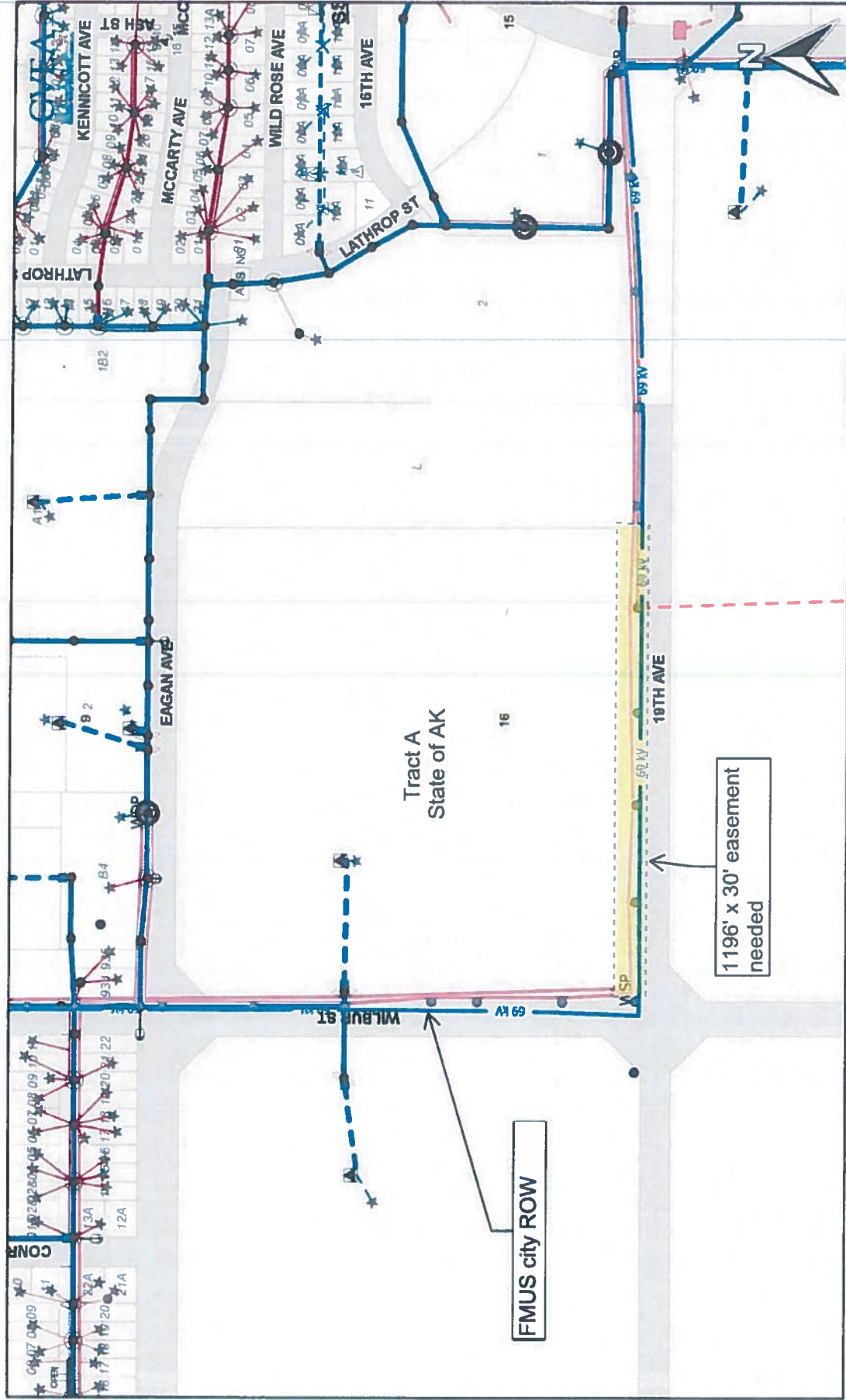
of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-(907) 269-8918, or sent by electronic mail to [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov). Under 11 AAC 02.030, appeals and requests for reconsideration filed under 11 AAC 02 must be accompanied by the 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 31<sup>st</sup> 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.

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# GVEA AIMS - jdgl Wilbur Street



90 m  
300 ft

Nov/10/2016  
Scale 1:10000

Township-Range: 01S001W  
System Map: 3-0101c

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



Site plan of the Silver Eagle LP development. The plan shows a residential area with lots numbered 1 through 100. The area is divided into several sections: 'SILVER EAGLE LP' (lots 1-10), 'MARQUETTE C' (lots 11-20), 'MINUTEMAN LP' (lots 21-30), 'REINER LP' (lots 31-40), and 'NORTH ST' (lots 41-50). A 'SEWAGE LAGOON' is located to the right of the residential area, labeled 'TR-G'. A yellow line indicates a proposed road or utility line, with a handwritten note 'this side 877 (x-)' pointing to it. The plan also shows 'TRACT 1' and 'TRACT 2'. A north arrow and a scale bar are included.

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



**This area is where fiber  
needs to be permitted**

Please include this area to be processed as part of ADL 420812  
This portion of line is located within Section 16, T.2S, R.2E, FM, AK