STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
Northern Regional Lands Office

Regional Manager's Decision

ADL 420814
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 (FOCs) in multiple locations. The applicant has requested private, non-exclusive easements in perpetuity.

RECOMMENDED ACTION
DMLW proposes to issue a private, non-exclusive easement under the casefile ADL 420814 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 private, non-exclusive easement for several sections of right-of-way on State lands 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 (ETAP) and other classification references described herein, Golden Valley Electric Association (GVEA) easements under ADLs 414981 and 41579, and the casefile for this application serialized by DNR as ADL 420814.

LOCATION INFORMATION

Geographic Location
a) Located north of Fairbanks as part of the Fort Knox Line (Fairbanks North Star Borough [FNSB] PAN# 652118).
b) Located North of Fairbanks off Pedro Dome Road (FNSB PAN# 460605).
c) Located north of Fairbanks along the Steese Highway between MP 25-26 (FNSB PAN # 452327).
d) Located north of Fairbanks along the Steese Highway between MP 25-26 (FNSB PAN # 600260).

Meridian, Township, Range, Section

a) Fairbanks Meridian, Township 2 North, Range 2 East, Section 7
b) Fairbanks Meridian, Township 3 North, Range 1 East, Section 36
c) Fairbanks Meridian, Township 3 North, Range 2 East, Section 18
d) Fairbanks Meridian, Township 3 North, Range 2 East, Section 7

Dimensions

a)	Width: 30 feet	Approximate Length: 3,592.43 feet	Approximate Acreage: 2.47
b)	Width: 30 feet	Approximate Length: 520.35 feet	Approximate Acreage: 0.36
c)	Width: 30 feet	Approximate Length: 4,580.97 feet	Approximate Acreage: 2.89
d)	Width: 30 feet	Approximate Length: 135.5 feet	Approximate Acreage: 0.09

Other Land Information

Municipality: City of Delta Junction
Regional Corporation: Doyon Ltd

See attached map.

TITLE

a) Tract C of F002N002E was patented to the State under Patent 50-2008-0087 on November 28, 2007 with an exception for ditches and canals constructed by the United States.
b) All of Section 36 of F003N001E was patented to the State under Patent 1227152 on June 4, 1962 with a reservation for ditches, canals, railroads, telegraph and telephone lines constructed by the United States. The patent is subject to any vested and accrued water rights and any ditches or reservoirs associated with said water rights.
c) The subject area was tentatively approved to the State under TA 1965-0074 on June 16, 1965. The following Mineral Surveys were excluded from selection within this section: 1798, 1919, 1793, 825, 805, 1605, 1926, 1919, 1901, and 1794. The TA stated the eventual patent would contain a reservation for ditches, canals, railroads, telegraph and telephone lines constructed by the United States. It would be subject to a right-of-way for a power transmission line.
d) The subject area was tentatively approved to the State under TA 1965-0074 on June 16, 1965. The following Mineral Surveys were excluded from selection within this section: 1741, 833, 804, 1733, 1728, 839, 1796, 809, 857, 1654, 1795, 834, 517, and 1797. The TA stated the eventual patent would contain a reservation for ditches, canals, railroads, telegraph and telephone lines constructed by the United States. It would be subject to a right-of-way for a power transmission line.

THIRD PARTY INTERESTS

a) GVEA holds an easement authorization for the electric lines, ADL 414981. There are active mining claims under ADLs 321178, 321177, and 321176 issued to Melba Creek Mining Inc.
b) GVEA holds an easement authorization for the electric lines, ADL 414579. GVEA has submitted an application to amend ADL 414579 to include lands now in state ownership. There is an active mining claim under ADL 615644 issued to Gertler Blake.

c) GVEA holds an easement authorization for the electric lines, ADL 414579. GVEA has submitted an application to amend ADL 414579 to include lands now in state ownership.
d) GVEA holds an easement authorization for the electric lines, ADL 414579. GVEA has submitted an application to amend ADL 414579 to include lands now in state ownership. There is an active mining claim under ADL 604792 issued to Fairbanks Gold LLC.

PLANNING & CLASSIFICATION

a) The subject area is within the ETAP unit F-16. Lands within this unit are designated as minerals. Lands are to be retained in state ownership and to managed for mineral and habitat resource values. The authorization of a surface utility easement is consistent with the unit management intent.
b) The subject area is within ETAP unit F-144. Lands within this unit are designated as minerals and public recreation-dispersed. The plan states that his area will be managed for mineral values and authorizations are not to be issued that would be inconsistent with the management intent of this unit. Conveyances are prohibited within the planning unit, although authorizations (permits, lease or another lawful method) may be issued, if determined to be in the State's interest and consistent with the management intent of this unit. As this easement provides standard telecommunications technology to residents and businesses along the highway, it is a benefit to the State and therefore consistent with the management intent of this unit.
c) The subject area is within the ETAP unit F-16. Lands within this unit are designated as minerals. Lands are to be retained in state ownership and to managed for mineral and habitat resource values. The authorization of a surface utility easement is consistent with the unit management intent.
d) Subject area is within the ETAP unit F-28. Lands within this unit are designated as habitat and recreation-dispersed. Management intent for this unit is focused on mineral exploration and development, while providing opportunities for personal harvest and forest management, and protecting habitat and recreational values. Lands should be retained in state ownership. The authorization of a surface utility easement is consistent with the unit management intent.

While there are restrictions on development for several of these land use designations, there are exceptions for utilities; the operator of these FOCs does not qualify for a public utility easement, however FOCs are consistent with utility-type easements. Further, lands designated as habitat generally are to mitigate impacts to fish, wildlife, and their habitats. The plan states this can be done by avoiding significant impacts to these interests through siting or other management options. As this FOC was placed on existing electrical utility poles, there are no additional impacts to the area, meaning this activity is within the management intent of the area plan.

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 fiber optic cables in multiple locations. GVEA originally installed the FOC

within powerline easements, and the FOC was then sold to MTA in 2016. All sections of ADL 420814 were installed in 2000, 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 Services
U.S. Army Corp 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 these 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 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 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 fiber optic cables 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 420814. 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 easement shows the total acreage of all sections of the easement to be 2.47 acres + 0.36 acre + 2.89 acres + 0.09 acre = 5.81 acres total. Since the first two acres are covered under the base $480 fee, there remains 3.81 additional acres which will not be prorated. Therefore, **the annual fees due will be $480 + (4 x $240) = $1440**. 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 CPCN's, 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. The 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 Leinberger 10/17/19

for Jeanne Proulx
Regional Manager

Date

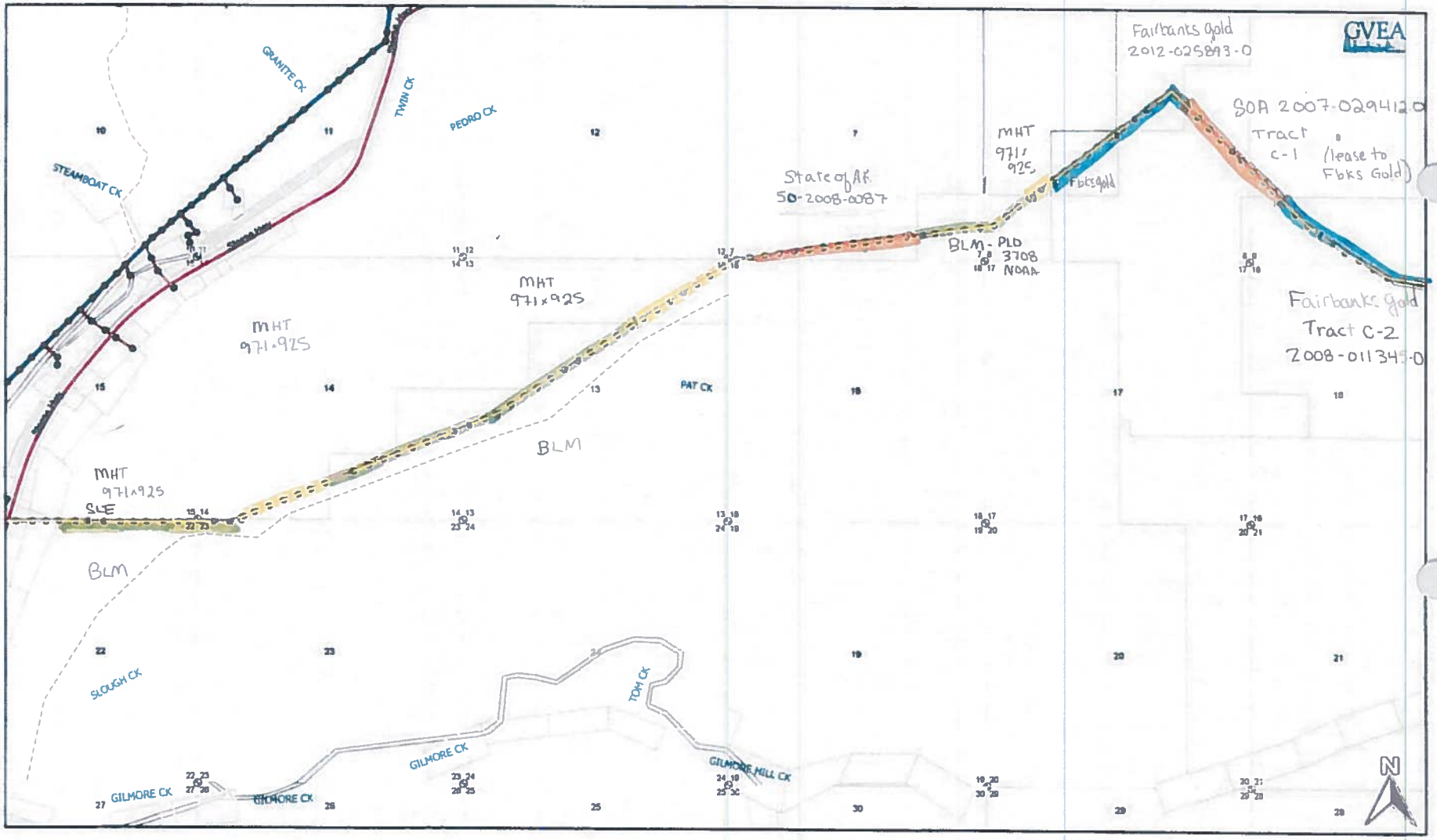
ATTACHMENTS

- 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.

Ft. Knox Line



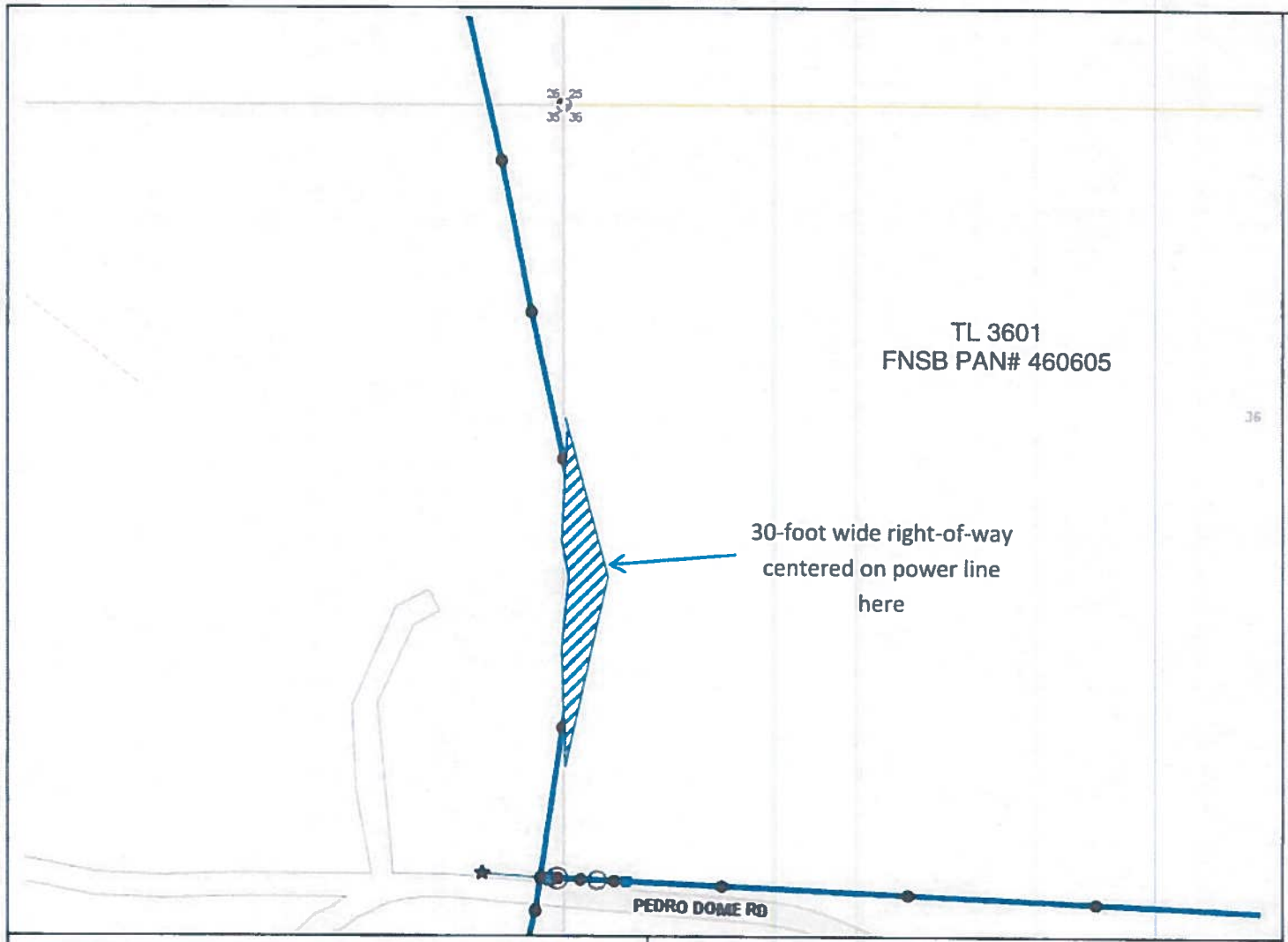
500 m
1500 ft

Nov/08/2016
Scale 1:50000

Township-Range: ~~02N001E~~
System Map: ~~1-02010~~

1-02N02E

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



GVEA

Golden Valley Electric Association

EXHIBIT "A"

Township: 3N
Range: 1E
Section: 36
Fairbanks Meridian

Scale:
NOT TO SCALE

N
W E
S

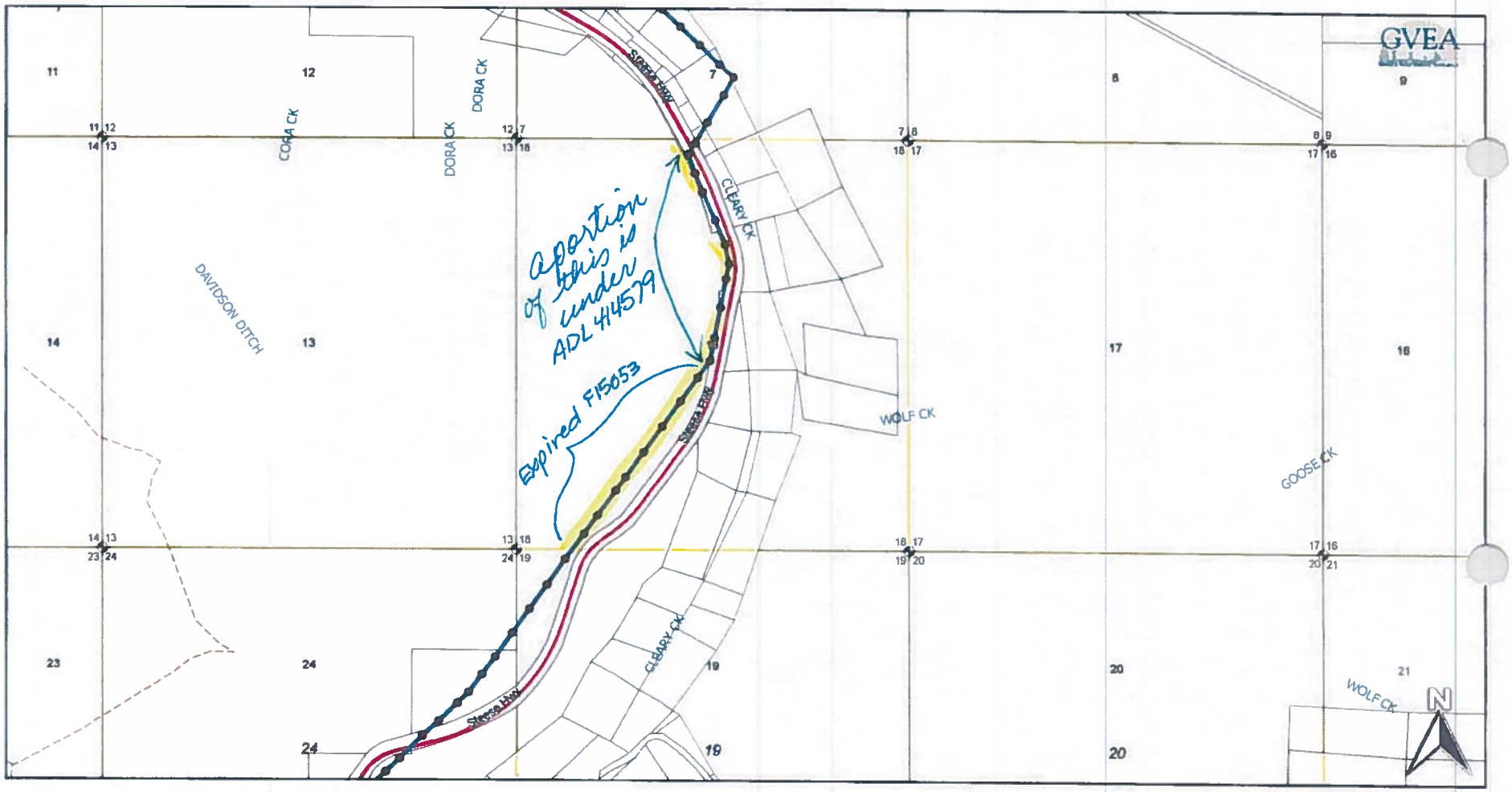
NAME: State of Alaska, DNR

LOCATION: FNSB PAN# 460605

WORK ORDER: 201510115

DATE: 2/8/2017

GVEA AIMS - cal

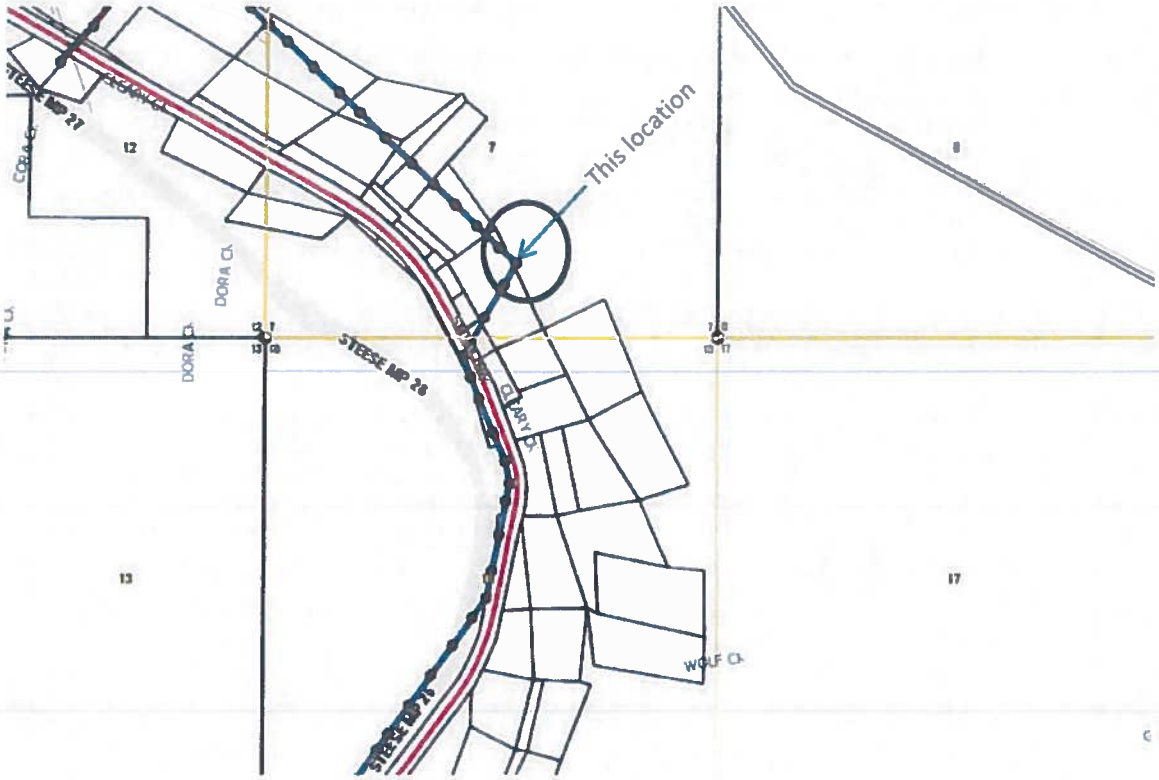


400 m
1200 ft

Feb/08/2017
Scale 1:41246

Township-Range: 03N002E
System Map: 1-0302c

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



Section 7, T.3N, R.2E, F.M.
FNSB PAN# 600260