

**STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
SOUTHCENTRAL REGIONAL LAND OFFICE**

**Regional Manager's Decision**

ADL 233511  
Cordova Telephone Cooperative  
Easement Application  
AS 38.05.850

**REQUESTED ACTION**

On November 22<sup>nd</sup>, 2019, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), received an application for an easement from Cordova Telephone Cooperative Inc. (CTC; the applicant) for a proposed fiber optic cable on State-owned, DMLW-managed shorelands in Eyak Lake near Cordova, Alaska. The purpose of the proposed easement is to provide telecommunications service to residents along the lakeshore and to Cordova Electric's Power Creek Hydro-electric Power Plant. The applicant has requested a private easement approximately 23,370 feet long, 30 feet wide, and 16.09 acres in size.

**RECOMMENDED ACTION**

Staff recommend that an easement be created with the following parameters:

- Width: 30 feet.
- Length: Approximately 23,370 feet, to be determined by as-built survey.
- Acreage: Approximately 16.09 acres, to be determined by as-built survey.
- Term: Indefinite.
- Grantee: CTC.
- Type of easement: Public utility easement
- Additional actions: Relinquishment of ADL 227577.

Staff's research and recommendations concerning the creation of this easement and any changes from the applicant's request are discussed below.

**SCOPE OF DECISION**

The scope of this decision is to determine if it is in the State's interest to create an easement for the proposed use under ADL 233511, and to authorize the termination of ADL 227577. The scope of administrative review for this authorization is limited to (1) reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and regulations; (3) facts pertaining to the land or resources; and (4) issues that are material to the determination that issuing the authorization is in the interest of the State of Alaska. All other aspects of the applicant's project are outside the scope of this decision.

**STATUTORY AUTHORITY**

This easement application is being adjudicated pursuant to AS 38.05.850 and the Alaska Land Act as amended.

**ADMINISTRATIVE RECORD**

The administrative record for the proposed action consists of the Constitution of the State of Alaska, the Alaska Land Act as amended, applicable statutes and regulations referenced herein, the 1988 Prince William Sound Area Plan, and the casefile for the application serialized by DNR as ADL 233511 and ADL 227577.

**LOCATION INFORMATION****Geographic Location**

The applicant has requested that DMLW authorize an easement on the shorelands underlying Eyak Lake near Cordova, Alaska.

**Meridian Township Range Section**

The applicant has applied to use State-owned, DMLW-managed shorelands within Sections 12, 13, 23, 24 & 26 Township 15 South, Range 3 West, Copper River Meridian and Section 7, Township 15 South, Range 2 West, Copper River Meridian.

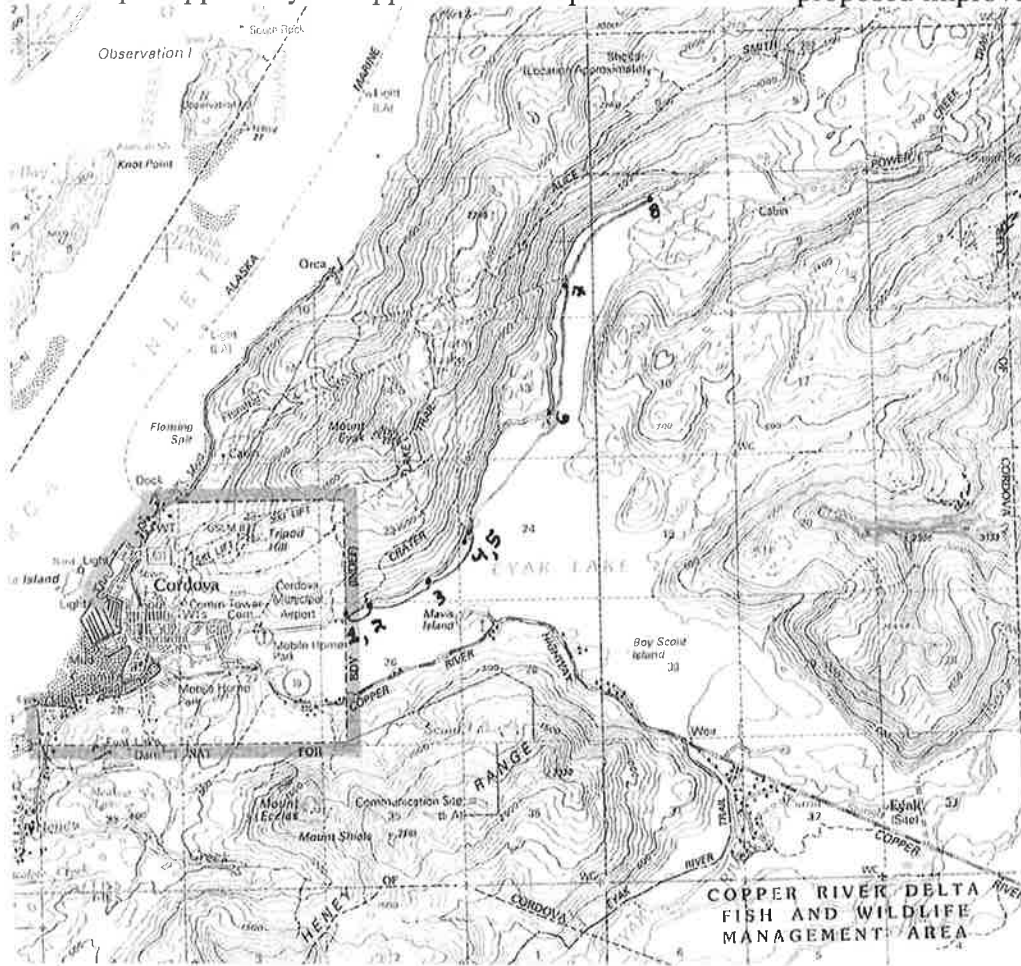
**Other Land Information**

Municipality: Cordova, Alaska.

Regional Corporation: Chugach Alaska Corporation

Village Corporation: The Eyak Corporation

**FIGURE 1** – Maps supplied by the applicant that depicts the area and proposed improvements.



## TITLE

The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying Eyak Lake in the section(s) referenced above, on the basis of the Equal Footing Doctrine, the Submerged Lands Act of 1953, and AS 38.04.062 (Identification of State Submerged Lands).

## THIRD PARTY INTERESTS

The applicant has requested an easement that may impact the following interests. Third party interest notification has been sent to all interest holders noted below.

### Third Party Notice Comment & Response

Cordova Electric Cooperative (CEC) has been identified as a third-party interest for an easement for submerged electrical cable (ADL 227646). CEC was sent the public notice but did not respond. Staff advise that the fiber optic cable discussed herein will provide service to a CEC facility. Staff therefore recommend that non-objection is presumed as no conflict is apparent and no objection was received.

## **PLANNING & CLASSIFICATION**

The proposed easement is located within the Prince William Sound Area Plan (PWSAP) and identified as Management Unit No. 27 City of Cordova. The subunit is 27A-City of Cordova and Eyak Lake and according to the PWSAP Eyak Lake is to be managed according to the guidelines contained in the Cordova Coastal Management Plan and the Eyak Lake Area Meriting Special Attention (AMSA) plan. Both plans incorporated the Alaska Coastal Management Program (ACMP). However, the ACMP was sunset in 2011 and therefore is no longer incorporated by reference within the PWSAP.

The land use designation for Subunit 27A is Public Recreation and converts to the classification of Public Recreation Land, which is suitable for recreation uses, waysides, parks, hunting etc. However, a goal of the PWSAP is to provide land for transportation and utility use to support local and statewide economic development, public access, transportation and utilities, as needed. Therefore, this proposed easement is supported by the plan because its purpose is to increase bandwidth and create a redundant remote monitoring connection for Cordova Electric's Power Creek Hydro-Electric Power Plant. In consideration of these factors the authorization of the proposed easement is compatible with the land use guidelines in the PWSAP.

## **ACCESS**

Functional legal access to the state land discussed herein exists via Eyak Lake.

Construction of the improvements described herein are contingent on the placement of related infrastructure on five adjacent upland parcels. Copies of the public notice for this application were sent to the addresses on file with CTC customer records for adjacent upland owners. No responses in objection were received.

## **PUBLIC NOTICE & AGENCY REVIEW**

### **Public Notice Summary**

Public notice of the application was conducted from December 12, 2019 to January 13, 2020. The notice was posted to the State of Alaska Online Public Notice System and was sent to the Cordova post office for display on their notice board. The notice was also sent to the following recipients:

### **Local Entities**

- City of Cordova-City Clerk
- City of Cordova-Planning
- City of Cordova- Harbor
- Cordova Electric
- Eyak Corporation
- Chugach Alaska Corporation- Lands and Resources Manager
- Native Village of Eyak
- Adjacent upland landowners

A total of 1 comment was received during the public review and is summarized below:

## **Public Notice Comment & Response**

**Comment:** On January 6<sup>th</sup>, 2020 the Native Village of Eyak commented "...installing fiber optic cable in Eyak Lake is a project that we support, however we do have concerns about where the work will come to shore, and in those work locations we request that there is an archeologist present. We understand that the work is to be done on state owned lands, however this entire area is part of our traditional homelands and we have concerns about possible cultural issues that could arise near shore."

**Response:** Staff acknowledged the comment and have forwarded it to the applicant. In addition, the agency notice was sent to the DNR Office of History and Archaeology, which did not respond. Staff advise that the entry authorization and easement documents will include a stipulation that the Office of History and Archaeology must be contacted if any historical sites are discovered.

No other public comments were received.

### **Agency Review Summary**

Agency review of the application was conducted from December 12, 2019 to January 13, 2020. The notice was sent to the following recipients. A total of 4 comments were received during the agency review and are summarized below:

#### **State of Alaska**

- DNR, Division of Parks and Outdoor Recreation, Permitting and Office of History and Archaeology
- DNR, DMLW: Surveys; Land Sales; Realty Services Section; Mining Section; and Water Section
- DNR, Division of Oil and Gas, Permitting; and State Pipeline Coordinator's Section
- DNR, Alaska Mental Health Trust Land Office
- DNR, Division of Forestry
- DNR, Division of Agriculture
- Department of Environmental Conservation (DEC) Division of Water Alaska Pollutant Discharge Elimination System Program
- DEC Division of Water, Waste Water
- DEC Solid Waste Program
- DEC Division of Environmental Health, Drinking Water Program,
- DEC Contaminated Sites
- Alaska Department of Fish & Game (ADF&G), Habitat; and Wildlife Conversation, Access Defense
- Alaska Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs
- Department of Transportation & Public Facilities (DOT&PF), Statewide Right of Way

#### **Federal**

- US Army Corps of Engineers

- Bureau of Land Management Field Office
- U.S. Fish and Wildlife Service

### **Agency Review Comment & Response**

**Comment:** On December 13<sup>th</sup>, 2019 the DEC Drinking Water Program commented "...this easement is near an active registered public water system source... For this reason, we ask that the applicant please adhere to the attached Recommendations for General Construction Projects, where applicable."

**Response:** Staff acknowledged the comment and have forwarded the comment and attachments to the applicant for reference.

**Comment:** On December 17<sup>th</sup>, 2019 the Alaska Mental Health Trust Land Office (MHTLO) commented "...ADL 233511 does not impact AMHT lands, therefore the MHTLO has no objections to the proposal within the northern waters of Eyak Lake near Cordova, AK."

**Response:** Staff acknowledged the comment and have forwarded it to the applicant.

**Comment:** On December 31<sup>st</sup>, 2019 the DEC Contaminated Sites Program Spill Prevention and Response Division commented "I manage one of the contaminated sites records in the vicinity of this Cordova easement. The specific contaminated site is called FAA Cordova MASLR Facility (2215.38.012) and was closed in 2007 with remaining contamination and ongoing conditions. Even with the history of contamination it is unlikely that the cable installation project will be impacted, therefore we have no objections to this proposed use. This does not preclude ADEC from requiring assessment and/or cleanup action if future information indicates that the soil or groundwater is contaminated."

**Response:** Staff acknowledged the comment and have forwarded it to the applicant. Staff advise that DMLW may require relocation of the easement and associated infrastructure at a future date if necessary, based on the requirements of a future DEC approved site analysis.

**Comment:** On January 10<sup>th</sup>, 2020 the Department of Transportation and Public Facilities commented that there is no objection to the project.

**Response:** Staff acknowledged the comment and have forwarded it to the applicant.

No other comments were received.

### **ENVIRONMENTAL CONSIDERATIONS**

Staff evaluate environmental factors directly related to the authorization of use of state lands, specifically whether the approval of the authorization is in the State's interest. The purpose of this consideration is to identify any associated mitigation measures or other requirements necessary to protect the public interest, while informing the overall decision of whether or not to approve the authorization.

Environmental contamination risk associated with this proposed easement is minimal. Staff recommend that fuel, lubricants, and other hazardous materials be restricted to those necessary and

be contained within tools and vehicles when equipment is necessary for construction and maintenance activities. Staff further recommend that no fuel or other hazardous materials are authorized to be stored on site.

The applicant acquired a Fish Habitat Permit from ADF&G serialized as permit number FH19-II-0174 to perform the proposed activity.

### **ECONOMIC BENEFIT & DEVELOPMENT OF STATE RESOURCES**

In accordance with AS 38.05.850, DMLW considers if the requested authorization will provide the greatest economic benefit to the State and development of its natural resources. Specifically, staff assess both direct and indirect economic benefits and whether the proposed authorization encourages the development of the State's resources. The authorization considered herein will provide a direct economic benefit to the state in the form of land use fees. Additionally, the proposed easement facilitates the expansion of the public utility system, which will promote conditions for economic development, thus providing an indirect benefit to the state. In consideration of these factors, and because there are no competing requests for authorization, staff advise that approval of this easement will provide the greatest economic benefit to the State.

### **DISCUSSION**

CTC holds an easement from DNR for a copper telephone line addressed herein under ADL 227577. Specifically, DMLW granted a public utility easement 20 feet wide, 16,065.54 feet long and containing 7.35 acres, more or less to CTC on April 28, 2000, recorded as Cordova Recording District document 2000-000190-0. Staff recommend a relinquishment of this easement as CTC has requested the infrastructure be included within the new ADL 233511 as the fiber optic will be placed along the surveyed copper cable path. CTC has stated the copper cable will serve as redundancy to the adjacent land owners for emergency services.

Staff recommend that an easement of a width described in 11 AAC 51.015 be created in order to provide adequate space for infrastructure placement and maintenance activities.

Staff recommend that the easement considered herein be granted for an indefinite term from the effective date of this decision as the need for this easement can be expected to exist as long as the adjoining land requires utility service.

Staff recommend that the authorization considered herein be a public utility easement granted to the applicant, as the applicant is a member owned cooperative non-profit utility association that holds a Certificate of Public Convenience and Necessity from the Regulatory Commission of Alaska and is required to provide service under this certificate within the specified service area. Easements created by DMLW are non-exclusive unless described otherwise.

Additionally, staff recommend that the character of the easement considered herein be defined by the inclusion of provisions that:

- limit the grantee to non-exclusive use of the parcel on behalf of the public.

- allow for termination when Grantor determines that the easement is abandoned, no longer in use for the purpose(s) authorized, or the easement is revoked as a result of violation of the terms, conditions and stipulations.
- following termination, whether by abandonment, revocation, or any other means, require that the grantee maintain responsibility for the rehabilitation of the site(s) to a condition that is acceptable to DMLW.
- withhold the right to transfer or assign the easement unless written approval from DMLW is obtained.
- reserve the right to amend the terms, conditions and/or stipulations of the easement prior to assignment, or to withhold assignment entirely.

## **PERFORMANCE GUARANTY**

A performance guaranty is intended to incentivize compliance with the terms and conditions of the entry authorization and easement. It also provides 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. Staff recommend that the applicant be required to submit a performance guaranty in the amount of \$15,200.00 to ensure completion of entry authorization requirements. These funds will also serve as a survey deposit (per AS 38.05.860) and may be reduced one time during the term of the entry authorization by an amount equal to payments made by the applicant to a licensed surveyor under contract for completion of an as-built survey in accordance with survey instructions issued by the DMLW Survey Section, as described herein. This performance guaranty shall remain in place during the term of the entry authorization and will be subject to release upon the acceptance of a DMLW-approved as-built survey and the fulfillment of all conditions and stipulations of this decision and the entry authorization. The performance guaranty may also be adjusted to reflect updates and changes in the associated project, and the applicant may be required to provide an additional performance guaranty if DMLW determines there is additional risk to the State. The performance guaranty may be utilized by DMLW to cover actual costs incurred by the State to pay for necessary corrective actions in the event the applicant does not comply with site utilization and restoration requirements and other stipulations contained in the entry authorization. An additional performance guaranty may be required for an extension of the entry authorization beyond the initial term proposed under this decision.

### **History of Compliance**

DNR Land Administration System records indicate that the applicant is in a state of compliance with the terms of other DMLW-issued authorizations.

## **INSURANCE**

Staff recommend that the applicant be 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 EA for ADL 233511. The applicant will be responsible for maintaining the necessary insurance during the term of the EA and 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 EA and easement.

### **SURVEY**

Staff recommend that a DMLW-approved as-built survey is required to determine the proper location and acreage of installed improvements and the associated easement on State-owned, DMLW-managed lands. The applicant will be required to request survey instructions prior to issuance of the entry authorization. The survey must be produced in accordance with survey instructions provided by the DMLW Survey Section and stamped by a Professional Land Surveyor registered in the State of Alaska. A final easement will not be issued until the as-built survey has been approved by DMLW.

### **FEES**

Staff find that the following fees are applicable to this request. These fees may be adjusted if regulation(s) or department fee schedule pertaining to the fee(s) change during the term of the entry authorization and/or easement and will be subject to non-sufficient fund and late payment penalty fees.

- The applicant shall pay an annual interim land use fee of \$120 per acre rounded up to the nearest acre, with a \$240 minimum, totaling \$2,040, per 11 AAC 05.070 (d)(2)(I) for the term of this EA. This fee is charged concurrently with any other land use fees that may be described herein.
- The applicant shall pay a one-time fee of 56 cents per linear foot, totaling approximately \$13,087.20, per 11 AAC 05.070 (d)(2)(C) prior to the grant of easement. This total will be adjusted based on the approved as-built survey.

Additionally, the applicant shall pay applicable document recording fees prior to DMLW's execution and recordation of the easement document.

### **ENTRY AUTHORIZATION**

The entry authorization is an interim authorization issued when a survey is necessary prior to easement issuance. Staff recommend that an entry authorization be issued for a term ending 5 years from the effective date of this decision for the purpose of constructing, surveying, operating, and maintaining the infrastructure considered herein prior to DMLW's issuance of a public easement. The entry authorization may be revoked if the applicant has not supplied DMLW with a draft as-built survey within 3 years of receiving survey instructions. An extension of the entry authorization may be granted at the written request of the applicant if granting the extension is deemed appropriate by DMLW and may be subject to applicable fees. If an extension is required, the applicant must contact DMLW no later than 30 days prior to the expiration of the entry authorization and certify there have been no changes to the approved development plan. Staff recommend that entry authorization not be granted until the following deliverables have been provided to DMLW, as described or recommended above:

- Land use fees.
- Evidence of having made request for survey instructions to the DMLW Survey Section.
- Insurance.
- A performance guaranty.
- Written commitment to relinquish ADL 227577.

### RECOMMENDATION

Based upon the information provided by the applicant, as well as review of relevant planning documents, statutes, and regulations related to this application, it is the recommendation of staff to issue an easement as described above, on the condition that all stipulations are followed as described in the attached authorization.

  
 Sarah Brandt, Natural Resource Specialist II  
 DMLW Southcentral Regional Land Office


6.9.20

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 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 Department 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.

  
 Samantha Carroll  
 Regional Manager  
 DMLW Southcentral Regional Land Office

6/10/2020

Date

### ATTACHMENTS

- Entry authorization, unsigned
- Draft easement document

**APPEAL**

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](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)(1)(F) 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.