

MEMORANDUM

Department of Natural Resources

State of Alaska

Division of Mining, Land & Water
Southcentral Region

TO: Marty Parsons, DMLW Director

DATE: 6/17/2020

THRU: Samantha Carroll, Regional Manager

FILE: ADL 233494

FROM: Sarah Brandt, Easements (NRS II)

PHONE: 269-0029

SUBJECT: SCRO has received a request for fee waivers under AS 38.05.850(b)

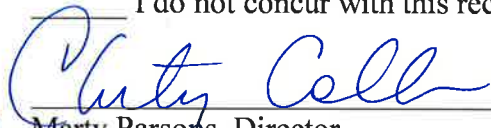
Copper Valley Electric Association (CVEA) has requested a waiver of all land use fees in accordance with AS 38.05.850(b)¹ for a proposed utility easement for a transmission line (ADL 233494) in Glacier View, Alaska. The project meets the first two requirements of the statute in that CVEA is a qualifying nonprofit cooperative association and the purpose of the infrastructure is to provide electricity. The statutory authority under AS 38.05.850(b) is delegated to the DMLW Director.

SCRO staff advise that this waiver not be considered in the interest of the State. While DNR supports the development of infrastructure that serves the public, such as this pre-existing electric line, State support is reflected in the low one-time fee charged for public utility easements², as well as associated interim fees³ and unauthorized use fees⁴. These fees represent a significant cost reduction to the applicant when compared to the annual fee for private non-exclusive easements for similar projects. These fees are also an interest of the State as they offset some of DMLW's administrative costs to issue and manage such easements. Therefore, we recommend that the waiver not be approved.

This memorandum will be incorporated by reference into the Regional Manager's Decision (RMD) for ADL 233494. This RMD will be the division's appealable record of decision for the consideration of this waiver request.

I do not concur with this recommendation

☒ I concur with this recommendation


for Marty Parsons, Director
DNR, Division of Mining, Land and Water

6/17/2020
Date

¹ AS 38.05.850(b): "the fee charged for a right-of-way approved under (a) of this section shall be waived by the commissioner if the right-of-way is for transmission or distribution line established by a nonprofit cooperative association organized under AS 10.25 for the purpose of supplying electric energy and power, or telephone service, to its members, and the waiver is considered by the commissioner to be in the best interest of the state."

² 11 AAC 05.070(d)(2)(C): A one-time fee of \$0.56 per linear foot for a public utility easement issued under AS 38.05.850. The applicant is estimated to owe \$5,600.00 one-time land use fees.

³ 11 AAC 05.070(d)(2)(I): An annual fee of \$120.00 per acre for each year of entry authorization. The applicant is estimated to owe \$840.00 in annual interim land use fees.

⁴ 11 AAC 05.070(d)(1)(D): Public or private easement or ROW to authorize an unauthorized use, \$400.

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

Regional Manager's Decision

ADL 233467
MTA FIBER HOLDINGS, LLC
ADL 233494
COPPER VALLEY ELECTRIC ASSOCIATION
Easement Application
AS 38.05.850

REQUESTED ACTION

On August 14th, 2019, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), received an application for an easement from MTA Fiber Holdings, LLC (MTA; the applicant) for a proposed telecommunications line on State-owned, DMLW-managed uplands near Glacier View, Alaska. On October 25th, 2019, DMLW received an application for an easement from Copper Valley Electric Association (CVEA; the applicant) for a preexisting electric line on State-owned, DMLW-managed uplands near the community of Glacier View, Alaska. The purpose of the easements is to provide service to the Tahenta Radio Relay Site. MTA's proposed telecommunication line will be collocated on the existing CVEA electric line. The applicants have requested coinciding public utility easements as follows:

Applicant	Length	Width	Acres
ADL 233467 MTA	14,559	30	10.03
ADL 233494 CVEA	10,000	30	6.88

RECOMMENDED ACTION

Staff recommend that the requested action(s) be modified, and that easements be created with the following parameters:

- Width: 30 feet
- Length:
 - MTA: Approximately 14,559 feet, to be determined by as-built survey
 - CVEA: Approximately 10,000 feet, to be determined by as-built survey
- Acreage:
 - MTA: Approximately 10.03 acres, to be determined by as-built survey
 - CVEA: Approximately 6.88 acres, to be determined by as-built survey
- Term: Indefinite
- Grantee: MTA and CVEA, respectively
- Type of easement: Public utility easements

Staff's research and recommendations concerning the creation of these easements and any changes from the applicant's requests are discussed below.

SCOPE OF DECISION

The scope of this decision is to determine if it is in the State's interest to create easements for the proposed use. 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

These easement applications are being adjudicated pursuant to AS 38.05.850 and the Alaska Land Act as amended, and AS 38.05.127.

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 2011 Susitna Matanuska Area Plan (SMAP), other classification references described herein, and the casefiles for the applications serialized by DNR as ADL 233467 and ADL 233494.

LOCATION INFORMATION

Geographic Location

The applicants have requested that DMLW authorize easements near Glacier View, Alaska.

Meridian Township Range Section

The applicants have applied to use State-owned, DMLW-managed upland lands within Section 1 of Township 20 North, Range 11 East, and Sections 6, 7, and 8 of Township 20 North, Range 12 East, Seward Meridian, Alaska.

Other Land Information

Municipality: Matanuska Susitna Borough.

TITLE

The State of Alaska holds title to applicable portions of lands within Section 1 of Township 20 North, Range 11 East, Seward Meridian, Alaska, per Patent Number 50-86-0100 and Tentative Approval Number 198-00173, recorded as Palmer Recording District document 1986-002500-0 (also Chitina Recording District document 1986-000148-0) and Palmer Recording District document 2014-004172-0 (also Chitina Recording District document 2014-000164-0), respectively. The associated DNR selection casefile is GS-2031.

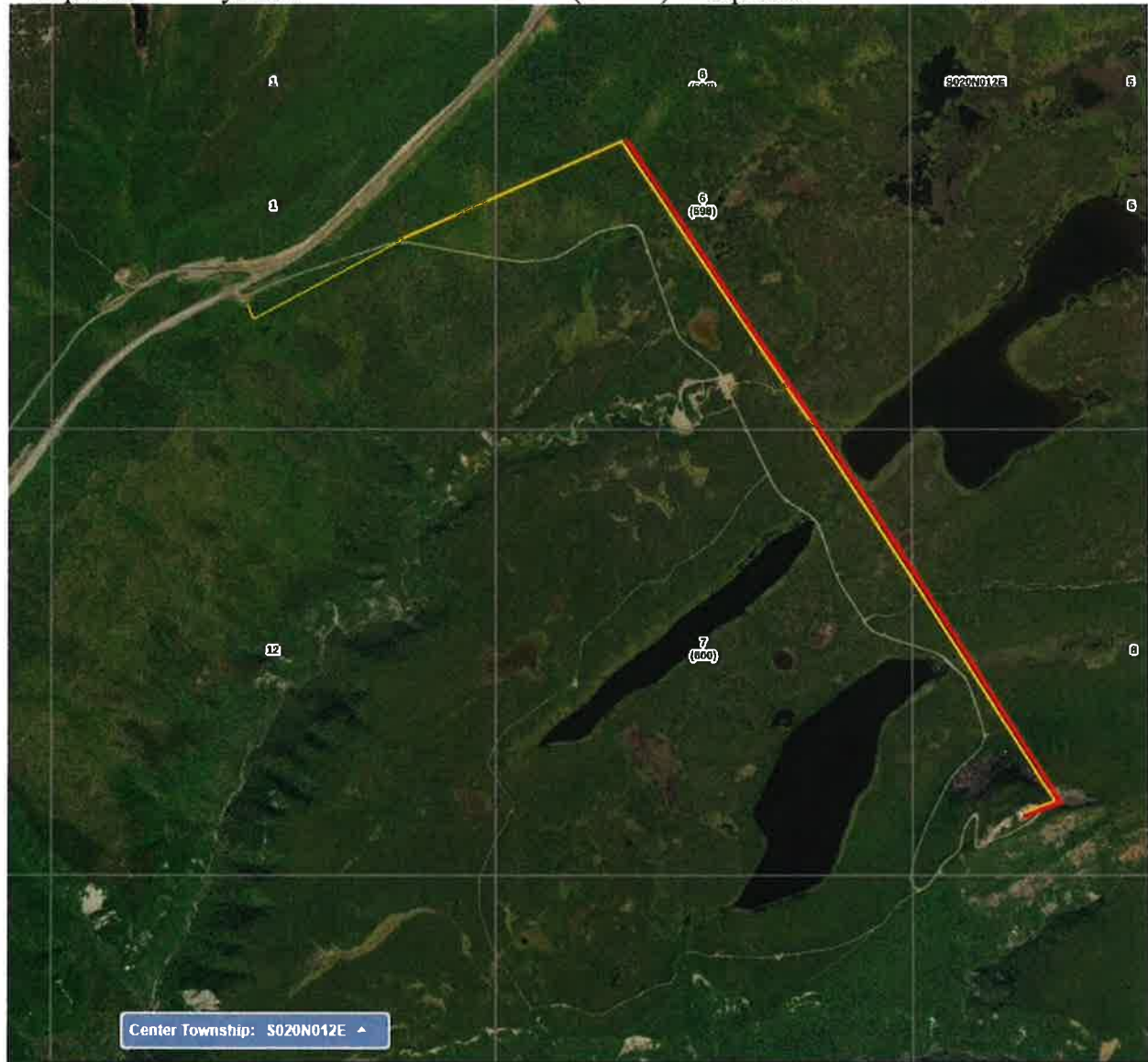
THIRD PARTY INTERESTS

The applicants have 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

Alascom, doing business as AT&T Alaska, has been identified as a third party interest for the access road under AA-55011 and the electric line serialized as 230669. MTA has provided DMLW staff with email correspondence between MTA and AT&T, dated November 22, 2019, representing AT&T's concurrence on the revised plan drawings. This satisfies the non-objection requirement for any third party interests associated with the proposed easement.

FIGURE 1 – A DNR map that depicts the area and proposed improvements. ADL 233467 (MTA) is depicted with a yellow line and ADL 233494 (CVEA) is depicted with a red line.



PLANNING & CLASSIFICATION

The 2011 Susitna Matanuska Area Plan (SMAP) identifies State-owned, DMLW-managed lands underlying the proposed utility easements as Glenn Highway Region, Unit G-20. Unit G-20 is designated as Public Recreation-Dispersed and Habitat. The designation of Public Recreation-Dispersed allows utility and road construction when designed appropriately to maintain recreational functions. This designation converts into the classification of Public Recreation Land which is consistent with the designated management intent. The proposed easements do not interfere with any known recreational functions in the area and are compatible with the guidelines described in SMAP.

The designation of Habitat allows utilities and roads when appropriate design is utilized to maintain the habitat functions. This designation converts to the classification of Wildlife Habitat

Land which is associated with land that is primary valued for unique assemblage of species. Specifically, in Unit G-20, authorizations are to avoid or mitigate impacts to sheep, goats and associated habitat. ADF&G was noticed during the public notice period and no comment was received. In addition, the proposed authorization ADL 233494 is pre-existing and in operation since 1965. ADL 233467 will be added to the existing overhead utility pole infrastructure; therefore, there is no significant effect to the area by authorizing these easements.

In consideration of these factors, the proposed authorizations of ADL 233467 and ADL 233494 are compatible with the land use guidelines described in the SMAP.

ACCESS

Functional legal access to the state land discussed herein exists via Glenn Highway.

Both utilities considered herein enter the right-of-way associated with the Glenn Highway after leaving DMLW managed lands. DOT&PF has supplied a comment of no objection to the proposed action.

PUBLIC NOTICE & AGENCY REVIEW

Public Notice Summary

Public notice of the applications was conducted from November 26th, 2019 to December 27th, 2019. The notice was posted to the State of Alaska Online Public Notice System and was sent to the Glennallen and Sutton post offices for display on their notice boards. The notice was also sent to the following recipients:

- Ahtna, Inc.
- Copper River Basin Lion's Club
- Copper Valley Chamber of Commerce

Public Notice Comment & Response

No comments were received during the public notice period.

Agency Review Summary

Agency review of the application was conducted from November 26th, 2019 to December 27th, 2019. The notice was sent to the following recipients.

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, Division of Environmental Health, Drinking Water Program
- Alaska Department of Fish & Game, 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 Alaska Public Information Center
- U.S. Fish and Wildlife Service

Borough

- Borough Clerk
- Planning Commission: Planning and Land Use
- Planning Commission: Environmental Planner

Agency Review Comment & Response

Comment: On December 5th, 2019 DEC Drinking Water Program commented the easement is not near an active registered PWS source.

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

Comment: On December 5th, 2019 Alaska Mental Health Trust Land Office commented they have no objections.

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

Comment: On December 20th, 2019 DOT&PF commented that they have no comment.

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.

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. There are no other known environmental considerations or constraints in this location.

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

Staff recommend that easements 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 both the easements be considered herein 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. Additionally, staff recommend that the ADL 233494 easement be considered herein granted as public utility to CVEA as a member owned cooperative non-profit utility association that holds a certificate of public necessity and is required to provide service under this certificate within the specified service area. In addition, MTA's fiber optic cable is considered a public utility according to a Directors Policy Finding (DPF) dated June 1, 2020. The DPF states consistent with AO 310, it is the policy of DMLW that companies providing high speed internet, phone and data transmission service through the installation of FOCs should be treated as a public utility, whether regulated by the RCA or not, and be subject to regulations pertinent to a "public utility" easement.

A one-time un-authorized use fee will be applied in the fees section due to the CVEA electric line being constructed and utilized prior to this application. Specifically, within the patent, it states that the easement is not reserved although the construction of the line was completed in 1965 and been in use since.

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 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 applicants share 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 applicants be required to submit performance guaranty's in the amount of \$9,000.00 for CVEA and \$11,000 for MTA 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 applicants 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 applicants 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 applicants do 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 applicants are 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 and easement for ADL233467 and 233494. 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 applicants will be required to separately or jointly request survey

instructions prior to issuance of an entry authorization to either entity. The survey or surveys 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 to either entity until an as-built survey has been approved by DMLW that locates the applicable company's infrastructure.

FEES

Staff find that the following fees are applicable to these requests. 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(s) and/or easement(s), and will be subject to non-sufficient fund and late payment penalty fees.

Service	Authority	Fee
MTA		
Entry authorization into an applicable approved easement for site development for public easement for a non-exclusive use; for up to two acres	11 AAC 05.070(d)(2)(I)	\$1,200 per year (10 Acres)
Public easement for a utility; one-time fee of \$0.56 for each linear foot determined by survey.	11 AAC 05.070(d)(2)(C)	Estimated at \$8,153.04
Document recording and filing	11 AAC 05.010 (a)(14)	Varies based on document length
Bond amount for survey	11 AS 38.05.860	\$11,000
CVEA		
Entry authorization into an applicable approved easement for site development for public easement for a non-exclusive use; for up to two acres	11 AAC 05.070(d)(2)(I)	\$840 per year (7 acres)
Public easement for a utility; one-time fee of \$0.56 for each linear foot determined by survey.	11 AAC 05.070(d)(2)(C)	Estimated at \$5,600
Public or private easement or ROW for unauthorized uses, in addition to other applicable fees	11 AAC 05.070(d)(1)(C)	\$400
Document recording and filing	11 AAC 05.010 (a)(14)	Varies based on document length
Bond amount for survey	11 AS 38.05.860	\$9,000

CVEA has requested a waiver of all land use fees for this project in accordance with AS 38.05.850(b). Consideration of fee waiver request made under AS 38.05.850(b) is delegated to the DMLW Director, who determined that the waiver would not be in the interest of the State and should therefore be denied. A copy of the memo considering this request is included in the case file for this application and the Director's determination is made part of this Decision for appeal purposes.


ENTRY AUTHORIZATION

The entry authorization is an interim authorization issued when a survey is necessary prior to easement issuance. Staff recommend that entry authorizations 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 public utility easements. The entry authorizations may be revoked if the applicants have not supplied DMLW with a draft as-built survey within 2 years of receiving survey instructions. An extension of the entry authorization may be granted at the written request of the applicants if granting the extension is deemed appropriate by DMLW, and may be subject to applicable fees. If an extension is required, the applicants 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
- Performance guaranty.

RECOMMENDATION

Based upon the information provided by the applicants, 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.


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

6/18/2020
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 applicants have 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

6/18/2020

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. 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.