

**STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER**

Northern Regional Land Office

Regional Manager's Decision

ADL 421570

Alaska Department of Transportation and Public Facilities

Application for Easement

AS 38.05.850

Requested Action

The Department Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Northern Region Office (NRO) received a public access easement application from the Alaska Department of Transportation and Public Facilities (DOT) requesting to install a drainage improvement project on the Tanana Tofty Road near Manley Hot Springs. The proposed easement measures approximately 0.4 acres and includes raising the existing roadway grade, installing 2 culverts and associated diversion pipes, and depositing riprap materials.

Recommended Action

DMLW proposes to issue a public access easement as proposed.

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. 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) the 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.

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 2014 Yukon Tanana Area Plan (YTAP), and other classification references described herein, and the casefile for the application serialized by DNR as ADL 421570.

Location Information

Geographic Location:

Located at the Sullivan Creek crossing of the Tanana Tofty Road.

Legal Description: Section 18 of Township 3 North, Range 16 West, Fairbanks Meridian

Dimensions

Width: Variable Width

Approximate Length: 750 ft

Approximate Acreage: 0.4 acres

Other Land Information

Regional Corporation: Doyon Ltd.

Title

All of Section 18 was TA'ed to the State on June 30, 2009 under TA 2021-0012 excepting and reserving a right of way for ditches and canals constructed under the authority of the US. A number of mining claims were reserved under this TA. Most were later TA'ed to the State under TA 2014-0005 and TA 2015-0002, or do not impact section 18. Three active claims, F-61165, F-61178, and F-61188, include portions of Section 18; however, these claims are in the SW ¼ of the section and do not impact the area of the proposed easement.

Third Party Interests

There is a current state mining claim under ADL 716757 issued to Mudminers LLC.

Planning and Classification

The subject lands are within the T-26 unit of YTAP. Lands within this unit are codesignated as mineral and habitat lands. Lands within this unit are to be managed for their mineral values and for its important moose habitat. DNR is to consult with the Alaska Department of Fish and Game (ADF&G) prior to issuing an authorization involving long-term use. Lands designated as minerals are to be managed to provide opportunities for mineral exploration and development and economic opportunities while protecting environmental quality and cultural values. Lands designated as habitat are to be managed to include but are not limited to mitigating habitat loss, protecting publicly owned habitat base, and maintain and enhance the natural environment. While these two designations appear to conflict, the plan states that the development of specific subsurface resources may take precedence over surface uses and that impacts of certain development can be avoided during critical life periods of species. As this proposed project improves access for all local users of the area including for mineral resource extraction, and no habitat concerns were received from ADF&G, it is considered within the management intent of the plan.

Access

Access to the proposed easement is via the Tanana Tofty Road.

Background

On December 11, 2020, DMLW received an application from DOT for a small easement at the Sullivan Creek crossing of the Tanana Tofty Road near Manley Hot Springs. There was some discussion initially as to whether DOT needed an easement in this area, but it was determined that the proposed development would extend slightly beyond the right-of-way of the road, as well as it could be defined. The project would include the installation of two culverts with associated diversion pipes and riprap, as well as increasing the road width from 20 feet to 28 feet, to improve drainage at the creek crossing, which in the winter has issues with aufeis buildup making passage

difficult. The proposed project would be an entirely state funded project proposed to start in May of 2021.

At the time of the application, DOT also requested a mineral closing order (MO 1252) to minimize conflicts with future mining activities. This would enable DOT to protect the proposed infrastructure in this heavily mineralized area. However, this request was suspended February 26, 2021 to evaluate comments received regarding the MO during the notice period without delaying the easement adjudication. The proposed mineral order and comments received are outside the scope of this decision.

Public Notice & Agency Review

Agency Review Summary

Agency Review was sent on January 21, 2021 to the following agencies with comments due in 30 days:

- ADF&G
- DOT, Statewide
- DNR Land Sales Section
- DNR Office of History and Archaeology (OHA)
- DNR Mining Section

Agency Review Comment and Response

OHA – The proposed project overlaps the former mining camp of Tofty, recorded as archeological site TAN-00009. The applicant should note that this site is nearby and to avoid disturbing any archeological resources.

DMLW Response – Standard easement stipulations, including the *Alaska Historic Preservation Act*, prohibits the destruction of any state-owned historic site without approval from the Commissioner. If, during project construction, the applicant discovers any archeological resources they are required to cease operations and contact OHA.

Public Notice Summary

Public Notice was posted the DNR public notice webpage on January 21, 2021 with comments due in 30 days. Courtesy notice was sent to the Alaska Miners Association (AMA) and the underlaying mining claim holder, Mudminers LLC.

Public Notice Comment and Response

The AMA objected to the area being closed to mineral entry. DOT has since suspended their request for a mineral order. This comment is outside the scope of this decision. If there is a decision for a mineral order closing, these comments will be addressed in that decision.

Environmental Considerations

The environmental impacts of the proposed project are low. The application identifies the creek as already being heavily manipulated due to nearby mining operations. Impacts to the watershed are likely to be improved by allowing the free flow of water under the road surface. Potential impacts due to construction activities are likely to be limited to potential leaks from construction equipment

and possible sedimentation due to soil disturbance in the creek. These impacts should be mitigated through stipulations such as *Waste Disposal* and *Compliance with Government Requirements*.

Economic Benefit

In accordance with AS 38.05.850, DMLW considers three criteria to determine if this project provides the greatest economic benefit to the State and the development of its natural resources: direct economic benefit to the State, indirect economic benefit to the State, and encouraging development of the State's resources.

The proposed project offers a benefit to Alaska's economy by improving access to a resource extraction intensive area with limited alternatives for travel. It also benefits the residents of the nearby towns who depend on this road as their only overland travel route.

Discussion

While adjudicating this easement, DMLW considered the following two alternatives:

1. Do not issue an easement.

This is not the preferred alternative. The proposed project does not represent a significant change in the current alignment of the road, meanwhile drainage issues are making access on the road difficult during certain times of the year. Not issuing the easement to allow for the improvement of the creek crossing does not benefit the users of the area.

2. Issue the easement as proposed.

This is the preferred alternative. The proposed project requires little additional encumbrance to state lands while improving access to the area. DOT will work with Mudminers to minimize potential conflict between the surface and subsurface estate uses.

Performance Guaranty

A performance guaranty is intended to incentivize performance of the conditions of the easement and provide a mechanism for the State to ensure that the Grantee 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.

No performance guarantee is required.

Insurance

The applicant is a state agency and is self-insured. No additional insurance is being required.

Survey

A DOT parcel map will be sufficient to determine the proper location and acreage of installed improvements and the associated easement on state-owned, DMLW-managed. This parcel map must be completed prior to issuance of the easement.

Fees

Per 11 AAC 05.020 (b)(5), DMLW may waive a land use fee prescribed by 11 AAC 05.070 to a state agency if the waiver is in the public interest. As the proposed easement would improve access

in the area, which is currently impacted by frequent aufeis buildup, authorizing the easement to improve the drainage is considered within the public interest.

Fee: \$0

Relevant Fee Regulation(s): 11 AAC 05.020(b)(5)

Term

Easement Term: Until no longer needed.

Term Discussion: This easement will be issued in perpetuity.

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 condition that all stipulations are followed as described in the attached authorization.



Jaclyn Cheek

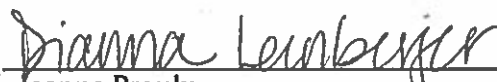
3/25/2021

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 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.

for 

Jeanne Proulx
Regional Manager

3/25/21

Date

Attachments:

Easement

Application Packet

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.