

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

**Regional Manager's Decision**

ADL 233644

Public Access Easement

**Road Extension, E. Republican Way, Palmer, Alaska**

**REQUESTED ACTION**

On May 26, 2020, the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW) received an application for easement from agent Max Schillinger, doing business as All Points North, LLC, on behalf of his clients. The purpose of the requested easement was to authorize the extension of an existing access road known as E. Republican Way. The extension was proposed to run within a parcel of State land that is managed by the DNR Division of Agriculture (DOA) as part of the Palmer Plant Materials Center (PPMC). The PPMC property is comprised of two parcels of land that are described in DNR case files OSL 573<sup>1</sup> and OSL 859<sup>2</sup>. The easement as proposed would affect lands within OSL 573 in an alignment that is approximately 224 feet long by 50 feet wide for an overall area of 0.19 acres, more or less. Please see Figure 1.

The PPMC is operated and managed by DOA in accordance with DMLW Management Right Assignment ADL 228306, which was issued on September 5, 2002. The Management Right Assignment confers jurisdiction and management of the property to DOA or its successors in administrative function. However, DOA does not have statutory authority to issue easements. Accordingly, Stipulation D of the Assignment states that “If the Holding Agency [DOA] does not have statutory authority, and the [requested] right-of-way or easement does not support the facility, the requestor must obtain the grant from DMLW, which will coordinate with DOA with respect to alignment and any special stipulations. The Holding Agency has the right to withhold concurrence and appeal to the Commissioner of the Department of Natural Resources, if it concludes that the grant will adversely affect its mission” (ADL 228306, pp. 3-4).

**RECOMMENDED ACTION**

It is recommended that the requested action be denied and that the casefile for ADL 233644 be closed because DOA did not provide the necessary concurrence for approval of an easement at the requested location. Additional research and findings concerning the applicant's request are further discussed below.

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<sup>1</sup> OSL 573 pertains to lands that were conveyed to the State in 1973 via Warranty Deed per Palmer Recording District Document #1973-001344-0.

<sup>2</sup> OSL 859 pertains to lands that were conveyed to the State in 1984 via Quit Claim Deed per Palmer Recording District Document #1984-031401-0.

## **BACKGROUND**

The owners of a private parcel situated south of the PPMC wish to subdivide their property. Currently, this private parcel has access via a gravel driveway connected to the western terminus of E. Republican Way. However, to subdivide their parcel, they are required to establish an access route that meets subdivision platting and construction standards set by the Matanuska-Susitna Borough (MSB), which the existing driveway does not. Therefore, in accordance with MSB standards, the applicant has proposed a design that would extend E. Republican Way to the north of the private parcel and create a cul-de-sac as the new terminus. The existing, previously constructed portion of E. Republican Way lays east of both the private parcel and the PPMC within a section-line easement (SLE). Ideally, the extension of E. Republican Way would continue within the SLE. However, the SLE is obstructed by an array of large utility poles in the area proposed for development. Therefore, the applicant has requested that DMLW reserve an additional public access easement adjacent to and immediately north of the section-line easement on the PPMC lot as depicted in Figure 1.

## **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) 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, other classification references described herein, the casefile for the application serialized by DNR as ADL 233644, Management Right Assignment ADL 228306 and DNR casefiles OSL 573 and OSL 859.

## **LOCATION INFORMATION**

### **Geographic Location**

The applicant has requested that DMLW authorize an easement to extend the area of E. Republican Way in Palmer, Alaska across underlying State land occupied by the PPMC which is managed by DOA.

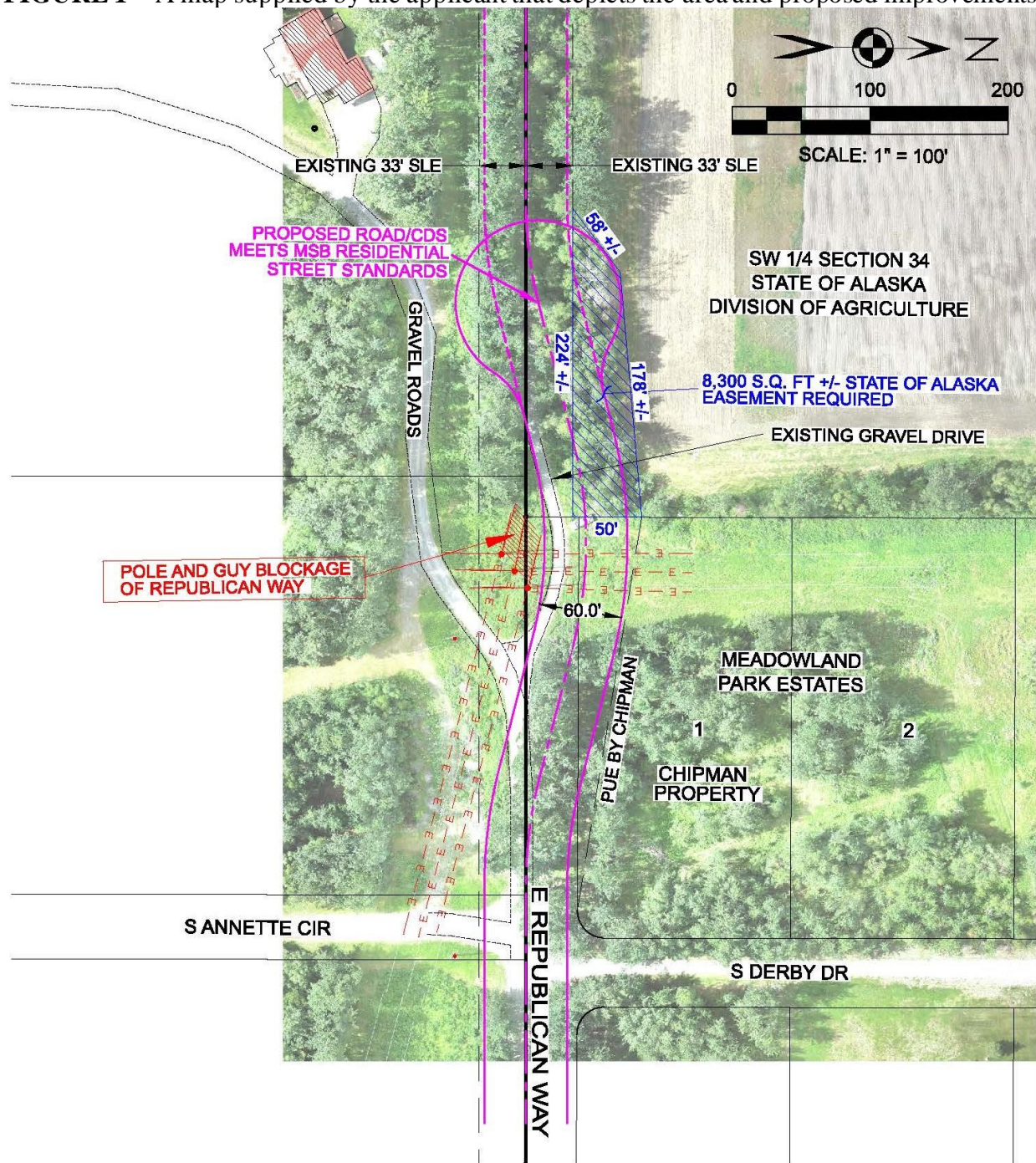
### **Meridian Township Range Section**

The applicant has applied to use State-owned, DOA-managed lands within the SE 1/4, SE 1/4, SW 1/4 of Section 34, Township 17 North, Range 2 East, Seward Meridian.

### **Other Land Information**

Borough: Matanuska-Susitna Borough

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



**CONTACT INFORMATION**

ALL POINTS NORTH LLC  
 MAX SCHILLINGER, PE, PLS  
 PO BOX 4207  
 PALMER, AK 99645  
 TEL. 907-746-4185

DATE PREPARED: 8/4/2020	APPLICANTS NAME: MAX SCHILLINGER, ALL POINTS NORTH LLC
STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES ADL 233644	
ROAD EASEMENT DIAGRAM E. REPUBLICAN WAY	
SECTION 34 TOWNSHIP 17N RANGE 02E SEWARD MERIDIAN	
SHEET 2 OF 3	FILE #

## **TITLE**

The State of Alaska DNR holds title to the affected lands within Section 34 of Township 17 North, Range 2 East, Seward Meridian, Alaska per Warranty Deed granted by Shirley A. Beaver on March 6, 1973; filed as document number 1973-001344-0, Palmer Recording District. The associated DNR land acquisition casefile is OSL 573. A title report for the proposed project area was completed by the DNR DMLW Realty Services Section on September 17, 2020.

## **THIRD PARTY INTERESTS**

DOA occupies and manages the lands underlying the boundaries of the proposed easement per OSL 573 and ADL 228306.

## **PLANNING & CLASSIFICATION**

Lands affected by this decision are described in DNR's Susitna Matanuska Area Plan (the Plan), and specifically within Glenn Highway Region Unit G-02, which encompasses the PPMC. The purpose and management intent of the property is described as follows:

“This unit is level terrain adjacent to the Matanuska River and the Plant Materials Center occupies the site. It is managed based on a management right given to the Division of Agriculture, ADL 228306. This unit consists of OSLs 573 and 859. The Matanuska River is anadromous and the unit provides moose calving and winter habitat. Manage pursuant to ADL 228306, management right to the Division of Agriculture. Protect riparian habitat with riparian buffers. If the Plant Materials Center ceases operations a plan amendment will be required” (Susitna Matanuska Area Plan, 2011, p. 98).

Because the Plan requires that the specified lands be managed in accordance with ADL 228306, which requires concurrence from DOA for issuance of an easement by DMLW, and because that concurrence was not provided, DMLW concludes that the easement as proposed is not consistent with the Plan.

## **ACCESS**

Functional legal access to the State land discussed herein exists via E. Republican Way.

## **PUBLIC NOTICE**

Public notice of the application was conducted from August 27, 2020 to September 29, 2020. The notice was posted to the State of Alaska Online Public Notice System and was sent to the Palmer, Alaska Post Office for display on their notice board. The notice was also sent to the following recipients:

- Cook Inlet Region Inc.
- Great Land Trust
- Eklutna Inc.
- Matanuska Electric Association
- Chugach Electric Association
- Municipal Light and Power
- The owner(s) of Government Lots 3, 4, 5 and 6, Section 3, Township 16 North, Range 2 East, Seward Meridian, Palmer Recording District.



- The owner(s) of Parcels 1 and 4 (Subdivided and recorded November 1, 1982 at Palmer Recording District) of that portion of U.S. Government Lots 2 and 7, Section 3, Township 16 North, Range 2 East, Seward Meridian located in the Palmer Recording District.
- The owner(s) of Lots 1, 2, 3, and 4, Block 1 and Lots 1, 2, 3, and 4, Block 2, Meadowland Park Estates Subdivision filed under Plat Number 83-88, Palmer Recording District.
- The owner(s) of a parcel of land lying totally within the east 1/2 of U.S. Government Lot 2, Section 3, Township 16 North, Range 2 East, Seward Meridian, Alaska.

### **Public Notice Comment & Response**

Comment: On September 3, 2020, Mr. Joseph Mazut submitted questions as to whether the proposed easement would continue down the entire length of the section line, if there will be a fence installed to stop all terrain vehicles from entering the PPMC and if “no parking” signs can be installed at the end of E. Republican Way.

Response: SCRO provided the commenter with the applicant’s development plan and informed him that the easement would only be located at the site indicated and for the dimensions described. Additionally, he was informed that there are no plans to install barriers or signs included in the applicant’s development plan, but that his questions could be included within the public notice comments portion of the decision document.

No other comments were received.

### **AGENCY REVIEW**

Agency review of the application was conducted from August 27, 2020 to September 29, 2020. The notice was sent to the following recipients.

- Alaska Department of Fish and Game (ADF&G)-Habitat
- ADF&G-Access Defense
- Alaska Mental Health Trust Land Office
- DNR-DMLW-Water Section
- DNR-Division of Oil and Gas (DOG)
- DNR-DOG-State Pipeline Coordinators Section (SPCS)
- DNR-DMLW-Survey Unit
- DNR-DMLW-Alaska State Land Sales
- Alaska Department of Environmental Conservation (DEC)-Division of Water (DOW)-Stormwater & Wetlands
- Alaska Department of Transportation and Public Facilities (DOT&PF)-Right of Ways
- DNR-DMLW-Realty Services
- DNR-DOA-Directors Office
- DNR-DOA-Palmer Plant Materials Center (PPMC)
- DNR-DOA-Agriculture Land and Sales Management
- US Army Corps of Engineers
- Matanuska Susitna Borough-Planning Division
- Matanuska Susitna Borough-Platting Division
- City of Palmer-Department of Community Development

- Palmer Soil and Water Conservation District

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

Comment: On September 24, 2020 DOT&PF provided the following comment.

The Alaska Department of Transportation & Public Facilities (DOT&PF) supports DNR DMLW's efforts to maintain the connectivity and functionality of highway right-of-way outside of the DOT&PF-maintained system. To this end DOT&PF advises that while the application depicts a 33-foot-wide section-line easement on State-owned, DNR-managed land, DOT&PF recommends the review of Alaska Attorney General's (official) Opinion #7, 1969, which directs that 50-foot-wide section-line easements exist on all State-owned land, including acquisitions acquired outside of the Federal land programs such as the property considered herein. Further, DOT&PF advises that 11 AAC 51.065 and related references requires DOT&PF concurrence before DMLW approves the vacation of any State-owned section-line easement. Please coordinate with DOT&PF's Central Region Right-of-Way Group in Anchorage.

Response: The subject Plant Material Center parcel is characterized by private ownership before its ultimate conveyance to the State for use by the Division of Agriculture. Section Line Easement widths described by the applicant will be reviewed and may be adjusted in conjunction with a required as-built survey prior to issuance of an easement, if any. Easement vacation is not proposed in the current action.

No other comments were received.

### **DISCUSSION**

The project agent for ADL 233644 depicted the SLE across the PPMC as 33 feet wide in the project development plan map provided with the application. During the agency notice period DOT&PF recommended review of the 1969 Opinion of the Attorney General No. 7 which describes the State's position on the reserved width of SLEs. According to the Opinion, "The width of the reservation is 100 feet (50 feet on either side of the section line) for dedications of state or territorial land after March 26, 1951" (p. 8). Because the land underlying the proposed easement area was conveyed to the State on March 6, 1973, the SLE should be 50 feet wide. However, it is also required that the land be surveyed, and a survey has not yet been performed at this location. If the SLE at the project location is eventually surveyed and determined to be 50 feet wide, an additional 17 foot width would be available for any proposed improvements. The additional width does not encompass the entire footprint of improvements proposed for development in for ADL 233644, but it is possible that a further reduced project development effort that fit entirely within a 50 ft wide SLE area might be approved if submitted for consideration pending receipt of concurrence from DOA. The project agent was contacted about the SLE width on October 8, 2020 but no response was received.

DMLW coordinated with DOA concerning ADL 233644 by providing copies of the application materials for their review prior to the public and agency notice period. The project agent was advised on June 30, 2020 that non-objection from DOA would be necessary to establish an easement across this particular parcel of State land and further informed him on July 13, 2020 that DOA had objected to the easement as described. The project agent then revised the application to

reduce the area of the easement proposed to cross PPMC lands. The revised application was circulated to public and agency notice, including to DOA, on August 27, 2020. However, DOA submitted a letter to DMLW dated September 28, 2020 which stated that pursuant to ADL 228306, they object to approval of the requested easement on PPMC land for several reasons including their determination that it would adversely affect its mission. This letter of objection was shared with the applicant on October 2, 2020.

Because DOA did not provide concurrence for the requested easement, DMLW has determined that it is not in the State's best interest to approve it.

### **RECOMMENDATION**

Based on information provided by the applicant, and in consideration of the lack of concurrence for the proposed easement from DOA, DMLW recommends that application ADL 233644 be denied.

  
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Haakon Sletten, Natural Resource Specialist  
DMLW Southcentral Regional Land Office

4/19/2021

\_\_\_\_\_  
Date

### **REGIONAL MANAGER'S DECISION**

When adjudicating an easement application pursuant to AS 38.05.850, DNR 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 event and criteria listed above, SCRO has determined that the easement application under ADL 233644 is not consistent with the DNR's mission. It is SCRO's decision that this project is not consistent with the overall classification and management intent for this land.

  
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Samantha Carroll, Regional Manager  
DMLW Southcentral Regional Land Office

4/19/2021

\_\_\_\_\_  
Date

### **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.