



STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
Northern Regional Land Office

Regional Manager's Decision

ADL 420439
Bureau of Land Management
Public Easement Application
AS 38.05.850

REQUESTED ACTION

On July 21, 2015, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Northern Regional Office (NRO) received an application for a public easement from the United States Bureau of Land Management for an existing trail on state-owned, DMLW-managed lands near Milepost 57 of the Elliott Highway, about 9 miles east of Livengood. The purpose of the proposed easement is to provide a public snowmachine trail. The applicant has requested a public easement approximately 12 miles long, 60 feet wide, and 87.3 acres in size.

RECOMMENDED ACTION

NRO recommends issuing a public easement 60 feet in total width--30 feet on both sides of the centerline of the existing trail--for a winter snowmachine trail, and for year-round non-motorized access. NRO recommends that existing state mining claim holders along the easement not be subject to any vehicular restriction of this easement if accessing their claims for mining purposes and otherwise comporting with DNR regulations. NRO also recommends incorporating an approximately ½ acre area adjacent to the Department of Transportation and Public Facilities (DOT) Right-of-Way (ROW) for trailhead improvements, currently including an outhouse, signs, and a ramp. This additional trailhead area consists of the first 100 feet of the trail from the edge of the DOT right-of-way, 110 feet both sides of centerline (220 feet total width), with the sidelines being extended or shortened to intersect the DOT ROW.

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.

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 2014 Yukon-Tanana Area Plan and other classification references described herein, and the casefile for the application serialized by DNR as ADL 420439.

LOCATION INFORMATION

Geographic Location

The applicant has requested that DMLW authorize an easement near Milepost 57 of the Elliott Highway, about 9 miles east of Livengood.

Township Range

The applicant has applied to use state-owned, DMLW-managed lands within:

Section 36, Township 8 North Range 4 West;
Sections 31, 32, 29, 28, 27, 22, 23, 14, and 13, Township 8 North, Range 3 West;
Sections 18, 17, 16, 15, 22, and 23, Township 8 North, Range 2 West;
Fairbanks Meridian; as shown on Attachment A.

Other Land Information

Municipality: Unorganized Borough

Regional Corporation: Doyon

Village Corporation: None

TITLE

The State of Alaska holds title to the following lands of the Fairbanks Meridian as follows:

MTRS	Patent/TA	#	Date
F008N004W, Section 36	Patent	50-89-0046	11/8/1988
F008N003W, Sections 13, 14, 22, 23, 27, 28, 29, 31, 32	Patent	50-88-0261	8/5/1988
F008N002W, Sections 15, 16, 17, 18, 22, 23	Patent	50-88-0273	8/9/1988

Standard title reservations apply.

THIRD PARTY INTERESTS

Three state mining claims are located near the proposed easement: ADL 622304, 622311, and 622312. All three claims are owned by Endurance Resources, Inc. Of the claims near the proposed easement, only ADL 622312 overlaps it; the far southeastern corner (about 3500 square feet) of the 40-acre claim is coextensive with the proposed easement. No conflict is anticipated; state

mining claimants will not be subject to vehicular restrictions of this easement if accessing their claims for mining purposes and otherwise comporting with DNR regulations.

PLANNING & CLASSIFICATION

The requested easement is within the boundaries of the 2014 Yukon-Tanana Area Plan (YTAP). The proposed trail easement traverses four units within YTAP: T-76, T-80, T-79, and T-74.

Unit T-76 is designated Minerals, which converts to a land use classification of Mineral Land. It is intended to be managed for its mineral values and resources. ADF&G is to be consulted prior to issuing long-term authorizations. ADF&G was consulted during the agency comment period and provided no objection. State mining claimants will not be subject to vehicular restrictions of this easement if accessing their claims for mining purposes and otherwise comporting with DNR regulations. This classification does not preclude issuance of this easement.

Unit T-80 is designated Water Resources, which converts to a land use classification of Water Resource Land. It is intended that the unit continue in its natural state, however continued dispersed recreation uses are appropriate. While development is generally inappropriate certain types of roads and similar types of projects providing a general public benefit are allowed. This type of easement is relatively low impact, provides a general public benefit, and constitutes precisely the sort of dispersed recreation use deemed appropriate by the plan. This classification does not preclude issuance of this easement.

Unit T-79 is designated Settlement, which converts to a land use classification of Settlement Land. Land disposals are considered appropriate, but impacts to habitat need to be considered. This classification does not preclude issuance of this easement.

Unit T-74 is designated Habitat, which converts to a land use classification of Wildlife Habitat Land. Generally, habitat designated land is to be maintained in an undisturbed, natural state. However, improvements related to public recreation are allowed. In this unit specifically, while development is not anticipated or considered appropriate, roads (and trails) that provide a general public benefit are allowed. This classification does not preclude issuance of this easement.

ACCESS

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

The authorization proposed herein will not impair public access; therefore, an easement pursuant to AS 38.05.127 is not necessary to ensure free access to and along any public or navigable waters. DMLW reserves the right to create an easement pursuant to AS 38.05.127 over the authorization proposed herein.

BACKGROUND

The Colorado Creek trail is a popular winter recreational trail leading from Milepost 57 of the Elliott Highway northeast to a Bureau of Land Management cabin within the White Mountains National Recreation Area (WMNRA). BLM reports that the trail has existed for at least 36 years, and, based on topographic maps, perhaps much longer. The applicant has been performing minor maintenance on the trail, including hand-clearing of brush and grooming of snow, since 1985. Parking for the trailhead is located within a pullout in the Elliott Highway right-of-way, held by the Alaska Department of Transportation. BLM has worked with DOT to authorize various

trailhead improvements, including several informational signs, a snowmachine loading ramp, an outhouse, and a bear-resistant trash receptacle. The improvements are at the edge of the right-of-way and BLM would like to ensure that they are wholly authorized, as well as secure a public easement for the portion of the trail on state land.

PUBLIC NOTICE & AGENCY REVIEW

Public Notice Summary

Public notice of the application was conducted from January 28, 2016 to February 29, 2016. The notice was posted to the State of Alaska Online Public Notice System. Notice was also mailed to the following mining claimants:

David Alton Flippo (ADLs 617878, 617877, 617876, 617870, 617868)

Jamie Fritz (ADL 620071)

Ruslan Kulikovskiy (ADLs 618624, 618622, 617745)

Precision Exploration, LLC (ADLs 617857, 617865, 617864, 617863, 617741, 617743, 617858).

Public Notice Comment & Response

No comments were received during the public notice period.

Agency Review Summary

Agency review of the application was conducted from January 28, 2016 to February 29, 2016. The notice was sent to the following recipients:

Martin Shurr, Alaska Department of Transportation & Public Facilities

Jack Kerin, Alaska Department of Natural Resources, Division of Mining, Land & Water, Mining Section

Marla Carter, Alaska Department of Fish & Game

Office of History & Archaeology Review Compliance, Alaska Department of Natural Resources, Division of Parks

Agency Review Comment & Response

No comments were received during the agency notice period.

ENVIRONMENTAL CONSIDERATIONS

This decision considers the environmental factors directly related to the authorization for 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. Fuel, lubricants, and other hazardous materials will be restricted to those necessary and will be contained within vehicles and vegetation clearing equipment when such equipment is necessary for right-of-way maintenance. No fuel or other hazardous materials will be stored on site.

There are no other known environmental considerations or constraints in this location. The applicant is ultimately responsible for determination of site suitability.

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, DMLW assesses both direct and indirect economic benefits and whether the proposed authorization encourages the development of the State's resources.

The proposed easement facilitates the expansion of public recreational resources, 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, approval of this easement will provide the greatest economic benefit to the State.

DISCUSSION

The Colorado Creek trail is a very popular winter recreation destination, as it provides a ready means of recreational access to the White Mountains National Recreation Area. Many avid winter recreationists use the trail, including snowmachiners, skiers, and dog-mushers.

BLM has maintained for public benefit both the trailhead as well as the trail itself for many years. The trailhead area includes a loading ramp and signs. Until recently it also included an outhouse, but it was damaged and subsequently removed. The improvements are largely contained within the DOT right-of-way, but a small portion may lay outside. For this reason, the first 100 feet of the easement, from the edge of the Elliott Highway right-of-way, will be 110 feet on both sides of the centerline of the existing trail (220 foot total width); beyond the first 100 feet, the easement is 30 feet on both sides of the centerline of the existing trail (60 foot total width) centered on the existing trail (see Attachment A).

The trail is predominantly composed of tussock and tundra underlain by permafrost: conditions which provide relatively open and scenic terrain for an enjoyable winter trail, but which make it particularly vulnerable to damage in the summer. For that reason, BLM clarified that they would prefer that the easement be restricted to non-motorized use in the summer, and to non-motorized or snowmachine use in the winter. DNR appreciates the particular and long-standing investment of time and funds expended by BLM in maintaining a winter route generally regarded highly by winter recreationists and agrees to so limit the easement. This limitation will not apply outside of the easement, and state mining claimants holding claims encompassing, or adjacent to, the authorized area will not be subject to vehicular restrictions of this easement if accessing their claims for mining purposes and otherwise comporting with DNR regulations. These vehicular restrictions will not apply to the portion of the 200' wide portion of the easement west of the signs; that is, the area provided for trailhead parking.

The term of this easement will be perpetual, or until no longer needed.

Following termination, whether by abandonment, revocation, or any other means, the applicant shall rehabilitate the site(s) to a condition that is acceptable to DMLW.

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, etc.), restoration (interim and final), and any associated costs after termination or expiration of the easement. In consideration of the low risk associated with the proposed authorization and the applicant's known history of compliance, I recommend that a performance guaranty not be required at this time. DMLW reserves the right to require a performance guaranty during the terms of either the entry authorization and/or the final easement.

INSURANCE

I recommend that insurance not be required as the applicant is self-insured. I recommend that the applicant be required to provide proof of its contractor's insurance upon DMLW's request.

SURVEY

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. The applicant is required to submit a preliminary draft as-built survey a minimum of one year prior to the expiration of the entry authorization to allow adequate time for DMLW's review and approval of a final as-built survey.

FEES


Per 11 AAC 05.020(b), the interim and one-time issuance fee(s) for this authorization are waived as the request is in the public interest. However, the applicant will be required to pay the appropriate recording fees to have the easement recorded by DMLW.

ENTRY AUTHORIZATION

The entry authorization is an interim authorization issued when a survey is necessary prior to easement issuance. I recommend that an entry authorization be issued for a term ending 5 years from the date of issuance for the purpose of constructing, surveying, operating, and maintaining the infrastructure considered herein prior to DMLW's issuance of a public access easement. 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.

RECOMMENDATION

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



R. Bruce Sackinger, Natural Resource Specialist
DMLW Northern Regional Land Office

4/19/21

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.

for 

for Jeanne Proulx, Northern Regional Manager
DMLW Northern Regional Land Office

4/19/21

Date

ATTACHMENTS

- Attachment A: Map
- Entry authorization
- 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.