

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
Southcentral Regional Land Office

Regional Manager's Decision

ADL 233247
Matanuska Telephone Association, Inc.
Easement Application
AS 38.05.850

REQUESTED ACTION

On August 23rd, 2018, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), received an application for a public easement from Matanuska Telephone Association, Inc. (MTA) for a proposed telecommunications line on state-owned, DMLW-managed shorelands underlying Big Lake, Alaska. The applicant has proposed to place the infrastructure in question in order to improve telecommunication service to Hoyt-Wolfe Island (Palmer Recording District Plat 60-14). The applicant has requested public easement approximately 240 feet long, 30 feet wide, and 0.17 acres in size.

RECOMMENDED ACTION

Staff recommend that the requested action be modified as follows, and that an easement be created with the following parameters.

- Width: 30 feet
- Length: Change from 240 feet to Approximately 160 feet, to be determined by as-built survey
- Acreage: Change from 0.17 acres to 0.11 acres
- Term: Indefinite
- Grantee: Matanuska Telephone Association
- Type of easement: Change to public utility easement

Staff's research and recommendations concerning the issuance of this easement, and any changes from that which was requested, are outlined 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. 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

DNR is authorized to execute easements on state land under the provisions of AS 38.05.850 and AS 38.05.127.

ADMINISTRATIVE RECORD

The administrative record for the proposed action consists of this casefile (ADL 233247).

LOCATION INFORMATION

Geographic Location

The applicant has requested that DMLW authorize an easement within Big Lake in the community of Big Lake, Alaska.

Legal Description

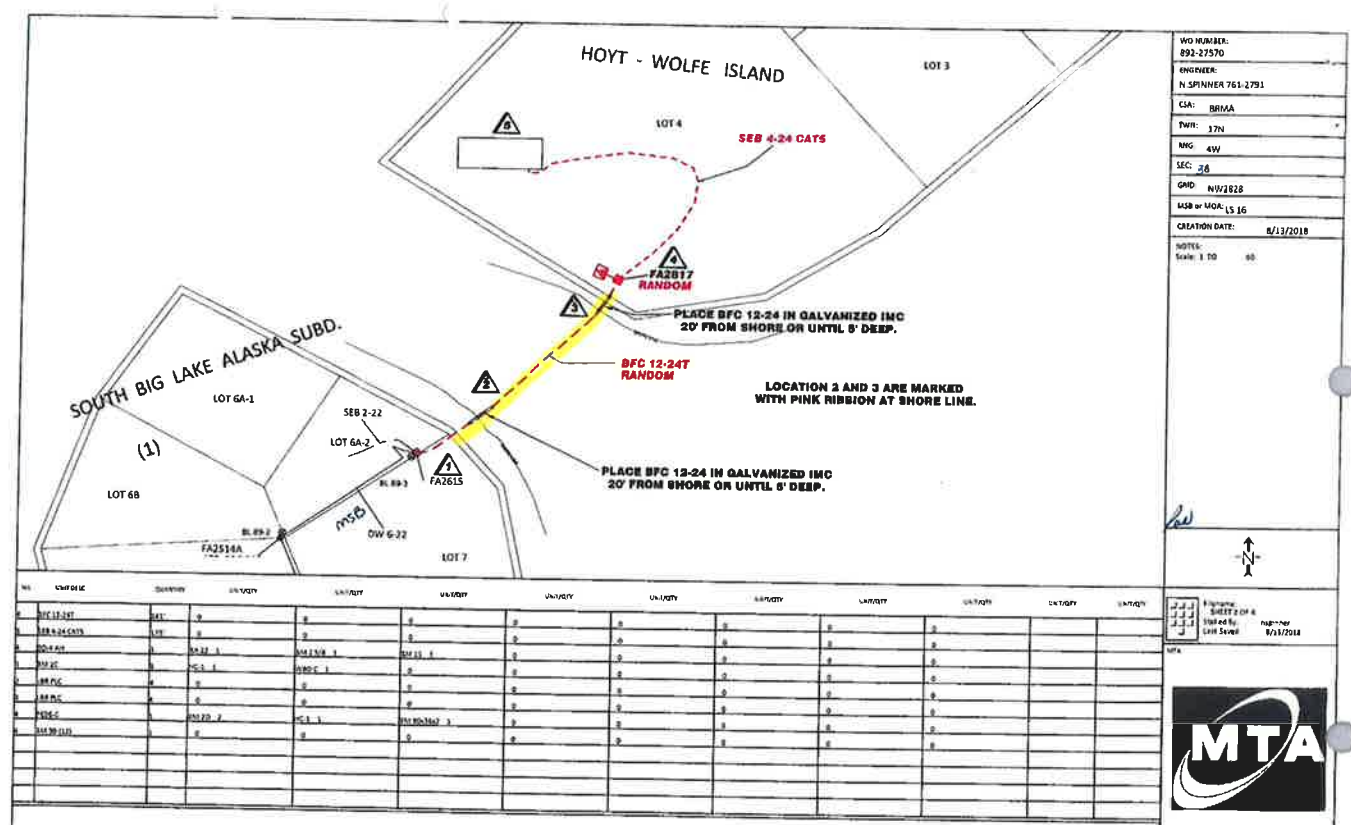
Within the SW 1/4 of Section 36 of Township 17 North, Range 4 West, Seward Meridian.

Other Land Information

Municipality: Matanuska Susitna Borough (MSB)

Regional Corporation: Cook Inlet Region, Incorporated (CIRI)

FIGURE 1 – A map 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 Big Lake in the section referenced above, per the Equal Footing Doctrine, the Submerged Lands Act of 1953, and AS 38.04.062 (Identification of State Submerged Lands).

THIRD PARTY INTERESTS

Three upland parcels adjoin the DMLW-managed shorelands considered herein;

- Lot 7 of South Big Lake Alaska Subdivision of Section 36 of Township 17 North, Range 4 West, Seward Meridian, which MSB tax records report is owned by the Matanuska Susitna Borough.
- Lot 6A-2 of South Big Lake Alaska Subdivision of Section 36 of Township 17 North, Range 4 West, Seward Meridian, which MSB tax records report is owned by Bruce and Tina Lalonde.
- Lot 4 of Hoyt-Wolfe Island of Section 36 of Township 17 North, Range 4 West, Seward Meridian, which MSB tax records report is owned by Lisa Battas and Edward Hoyt.

Adjoining upland landowners have not responded to a thirty-day notification regarding the proposed action. Staff recommend that non-objection is presumed as no conflict is apparent and no objection was received.

PLANNING & CLASSIFICATION

Big Lake is located within the Southeast Susitna Area Plan and is designated as Public Recreation-Dispersed and Habitat, which converts to a classification of Public Recreation Land and Wildlife Habitat Land.

- MTA must consult the Alaska Department of Fish and Game (ADF&G) and comply with all ADF&G permitting requirements. Compliance with ADF&G permitting renders the proposed easement consistent with the designation of "Habitat."
- The proposed easement will not block public use and access on navigable waters and is consistent with the designation of "Public Recreation, Dispersed."

In consideration of these factors the proposed easement is consistent with the Southeast Susitna Area Plan.

ACCESS

Functional legal access to the State land discussed herein exists via Big Lake.

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.

PUBLIC NOTICE & AGENCY REVIEW

Public Notice Summary

Public notice of the application was conducted from August 31, 2018 to October 1, 2018, was posted to State of Alaska Online Public Notice System and was sent to:

- Wasilla, Palmer and Big Lake Post offices, for display on their notice boards
- Directly adjacent upland land owners
- Cook Inlet Region Incorporated

Public Notice Comment & Response

There were no comments received for the public notice.

Agency Review Summary

Agency review of the application was conducted from August 31, 2018 to October 1, 2018, and was sent to:

State of Alaska

- DNR, DMLW: Water Section; Mining Section; Survey Section; Resource Assessment and Development Section; and Realty Services Section
- DNR, Division of Parks and Outdoor Recreation
- Alaska Mental Health Trust Land Office
- DNR, Division of Forestry (Matsu Area Office)
- DNR, Division of Oil and Gas, State Pipeline Coordinator's Section; and Permitting Team
- DNR Soil and Water Conservation (Upper Susitna District)
- Alaska Department of Transportation and Public Facilities, Central Region Office
- Department of Commerce, Community, and Economic Development Division of Community and Regional Affairs
- Department of Environment Conservation Water, Drinking Water Program
- ADF&G Habitat; Wildlife Conservation Divisions

Local

- Matanuska-Susitna Borough: borough clerk and planning commission

Federal

- U.S. Army Corps of Engineers

Agency Review Comment & Response

Comment: On September 14th, 2018 DOT&PF stated they have no comment.

Response: DMLW acknowledges their comment.

No other comments were received for the agency review.

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, 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, approval of this easement will provide the greatest economic benefit to the State.

DISCUSSION

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 have revised the applicant's estimate of the length of the requested easement based on a desktop analysis of the shore to shore distance of the proposed alignment.

Staff recommend that the easement considered herein be granted for an indefinite term from the effective date of this decision, because the need for this easement can be expected to exist as long as the adjoining land requires utility service. DMLW-created easements may be terminated when the 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 and conditions.

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 electric utility association. Easements created by DMLW are non-exclusive unless described otherwise.

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, staff 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.

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 entry authorization for ADL 233247. The applicant will be responsible for maintaining the necessary insurance during the term of the entry authorization. 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 entry authorization.

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. The Grantee 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

MTA has requested a fee waiver under AS 38.05.850 (b). This waiver was denied by the DMLW Director on June 12th, 2019 and is attached hereto. Therefore, staff find that the following fees are applicable to this request. These fees may be adjusted if regulation(s) pertaining to the fee(s) change during the term of the entry authorization and/or easement. The annual land use fee will be subject to non-sufficient fund and late payment penalty fees.

Service	Authority	Fee
Application for public or private easement, for a total of no more than one acre in area	11 AAC 05.070(d)(1)(A)(i)	\$480 ^a
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)	\$240 per year ^b
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 \$90
Document recording and filing	11 AAC 05.010 (a)(14)	Varies based on document length ^c

^a The application fee for ADL 233247 was paid on November 26, 2018.

^b Entry authorization into an applicable approved public easement for site development for a non-exclusive use is \$120 per acre per year, with a minimum of two acres. Proposed easement area is 0.11 acres. Therefore, the applicant is responsible for an annual fee of \$240 for the term of the entry authorization.

^c The first page is \$20.00; each page thereafter is \$5.00. There is a \$2.00 conformed copy fee.

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 3 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 utility 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. Staff recommend that entry authorization not be granted until the following deliverables have been provided to DMLW:

- Land use fees, as described above.
- Evidence of having made request for survey instructions to the DMLW Survey Section, as recommended above.
- Insurance, as recommended above.

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 A Brandt, Natural Resource Specialist
DMLW Southcentral Regional Land Office

6.7.19

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.


Clark Cox, Regional Manager
DMLW Southcentral Regional Land Office

6-13-19
Date

ATTACHMENTS

- Draft 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)(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.