

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
Southcentral Regional Land Office

Regional Manager's Decision

ADL 233359 and ADL 233379
Copper Valley Electrical Association and Copper Valley Telephone Association
Easement Application
AS 38.05.850

REQUESTED ACTION

On January 31, 2019 and February 7, 2019, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), received two applications for public utility easements from project agent Electric Power System Inc. on behalf of Copper Valley Electric Association (CVEA¹) and Copper Valley Telephone Association (dba Copper Valley Cooperative; CVTA²)³ for an underground electrical line and communication line on State-owned, DMLW-managed uplands within Thompson Pass, Alaska. The infrastructure is proposed to be installed where feasible within the boundary of the lease (ADL 63574) of the Trans-Alaska Pipeline System (TAPS) granted to Alyeska Pipeline Service Company (APSC). The purpose of the proposed easement is to provide power and communications to APSC for a cathodic corrosion protection array. In addition, the proposed infrastructure may be used to provide communications and electrical power to private and public entities in the future. The applicants have requested two public utility easements approximately 11.07 miles long, 10 feet wide, and 13.2 acres in size, each with a 30-year term. If approved, each applicant will be granted a separate entry authorization and will be authorized under individual easement documents.

RECOMMENDED ACTION

Staff recommend that the requested actions be modified, and that easements be created with the following parameters:

- Width: Change from 10 feet to 30 feet
- Length: 11.07 miles
- Acreage: Change from 13.2 acres to 40.3 acres for the issued easement. In addition, 30.4 acres for temporary access easements and .5 acres for temporary staging areas have been included in the entry authorization to facilitate construction and survey for an approximate total of 72 acres during term of the entry authorization.
- Term: Change from 30 years to indefinite
- Grantee: CVEA and CVTA
- Type of easement: Public utility easement(s)

¹ CVEA's application has been serialized by DNR as ADL 233379.

² CVTA's application has been serialized by DNR as ADL 233359.

³ CVEA and CVTA are collectively referred to as "the applicants".

- The proposed easements will align with the TAPS lease but may deviate outside the TAPS lease boundary in order to maintain a 37 foot buffer from the centerline of TAPS infrastructure that has been requested by APSC. The proposed easement may also deviate from the TAPS lease boundary depending on the terrain, subsoil conditions or the position of a General Communications Inc. (GCI) fiber optic cable (ADL 415791). The applicant's development plan indicates that this may occur within Sections 12, 13, and 14 of Township 8 South, Range 3 West, Copper River Meridian.

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 these authorizations are 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 authorizations is in the interest of the State of Alaska. All other aspects of the applicant's projects are outside the scope of this decision.

STATUTORY AUTHORITY

The 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 1986 Copper River Basin Area Plan, other classification references described herein, and the casefiles for the applications serialized by DNR as ADL 233359 and ADL 233379.

LOCATION INFORMATION

Geographic Location

The applicants have requested that DMLW authorize easements within Thompson Pass, Alaska.

Meridian Township Range Section

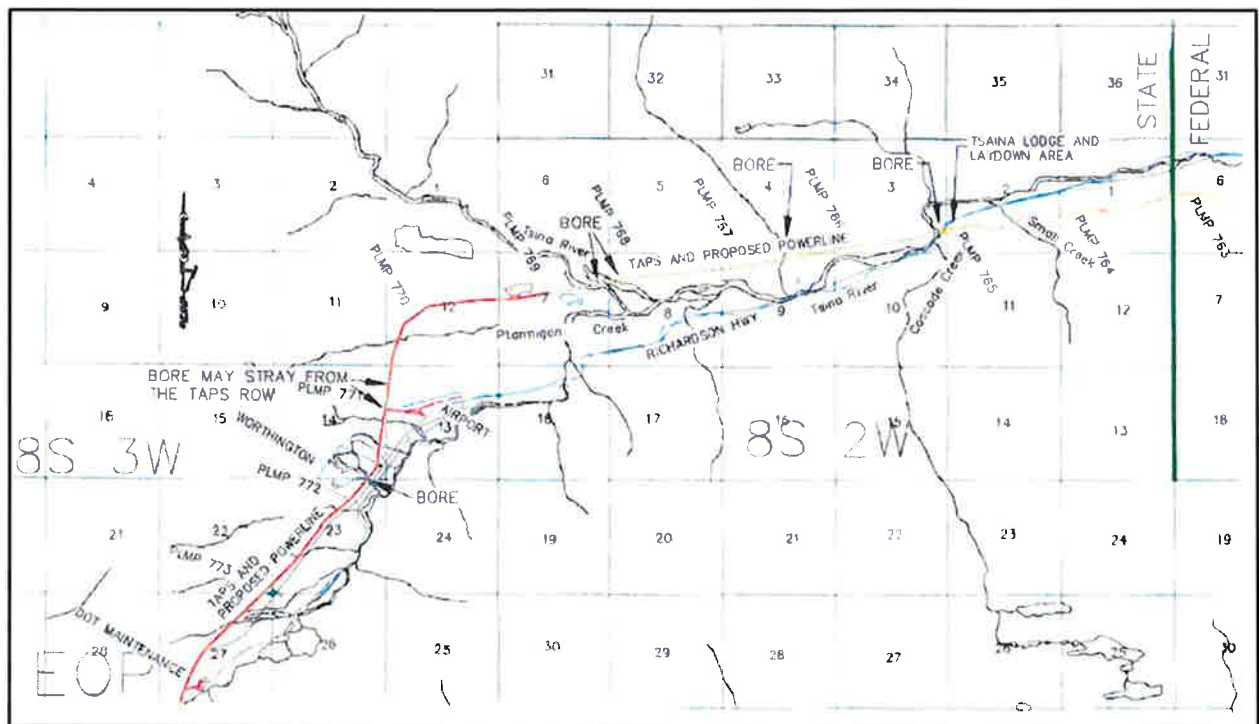
The applicants have applied to use State-owned, DMLW-managed uplands within Sections 1, 2, 3, 4, 7, 8, and 9, Township 8 South, Range 2 West, and Sections 12, 13, 14, 22, 23, and 27 Township 8 South, Range 3 West, Copper River Meridian.

Other Land Information

Municipality: None

Regional Corporation: Ahtna Inc.

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



TITLE

The State of Alaska holds title to the applicable portions of lands and portions of applicable lands within the U.S surveys listed below. Said surveys were transferred via separate patent from the adjacent lands:

<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Meridian</u>	<u>Patent</u>	<u>GS</u>
12, 13, 14, 22, 23, and 27	8 South	3 West	Copper River	50-2019-0030	1515
1, 2, 3, 4, 7, 8, and 9	8 South	2 West	Copper River	50-85-0058	1515
<u>U.S Survey</u>	<u>Township</u>	<u>Range</u>	<u>Meridian</u>	<u>Patent</u>	<u>DNR File</u>
5672	8 South	3 West	Copper River	50-95-0016	GS 1515
3577	8 South	3 West	Copper River	1211688	PL 507

These authorizations may cross navigable waters within state land. Lands on one or both sides of these waters at these locations are managed by DMLW; therefore, for simplicity, ownership is noted as having inured to the State through the acquisition of the adjoining uplands. However, the State of Alaska continues to hold title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including under any navigable waters in the sections referenced above, on the basis of the Equal Footing Doctrine, the Submerged Lands Act of 1953, and AS 38.04.062 (Identification of State Submerged Lands) irrespective of how ownership is reported herein.

THIRD PARTY INTERESTS

The applicants have requested an easement that may impact the following interests. Third party interest notification has been sent to all interested holders noted below.

Third Party Notice Comment & Response

The following third parties have provided DMLW with non-objection to the proposed action:

<u>Third Party</u>	<u>DNR File identifier</u>	<u>Date of Non-objection</u>
Department of Parks and Outdoor Recreation (DPOR)	ADL 50051	March 27, 2019
GCI	ADL 415791	January 8 and February 18, 2019
APSC	ADL 63574	January 29, and April 4, 2019
	LAS 31497	
	ADL 201270	

In addition, the proposed easement will also cross lands which hold the following interests, all of which are related to winter recreation:

- LAS 29417 and LAS 27928, both issued to Joshua Swierk
- LAS 27888, issued to 907 Snow Cat LLC
- LAS 27925, issued to Mark Sullivan

Staff recommend that these interests not be considered third party interests due to the seasonal nature of the authorized land uses and the limited impact the proposed construction will have on the land users' authorization.

PLANNING & CLASSIFICATION

The proposed easements are located within lands that are classified by the 1986 Copper River Basin Area Plan (The Plan), specifically within Management Unit 15 - Thompson Pass, Subunit 15A. The unit's primary land use designation is Public Recreation. The unit's secondary designations include Sand and Gravel, Transportation Corridor and Forestry. These designations convert to land classifications of Public Recreation Land, Material Land, Transportation Land, and Forestry Land respectively. The plan provides additional guidance for this unit:

- While the secondary designation of transportation provides that utility installation is a consistent use of the unit, management guidelines also direct that surface access routes and facilities should be consolidated where feasible. The proposed infrastructure is to be

located primarily within the TAPS corridor, and as such, the proposed easements are in keeping with the character and use of this preexisting land use.

- The plan also states that, where feasible, transportation facilities should be separated from wetlands and waterways. The proposed easements will cross several streams and associated wetlands as it follows the TAPS corridor. However, the applicant's plan to mitigate potential impacts to these areas by horizontal boring underneath waterbodies for placement of their infrastructure.
- The plan recommends avoiding construction that will have impact on fish and wildlife resources and that the location of routes and the timing of construction should be determined with Alaska Department of Fish and Game (ADF&G). On April 4, 2019, ADF&G issued a statement that outlined that the department's primary concern was the potential for the unexpected release of pressurized drilling mud into fish streams and requested that the applicants be directed to apply for a fish habitat permit. This comment was forwarded to the applicants.
- The plan states that "all development along the Glenn, Richardson, and Edgerton Highways should be designed to maximize views from the highway". The proposed easements will not obstruct the scenic value of the area as the applicants propose to bury the utility lines.
- The plan recommends that the DNR DPOR review construction projects and land uses for potential conflict with cultural resources and develop guidelines for how to identify, avoid or mitigate potential conflict. The DPOR State Historic Preservation Office (SHPO) was included in the proposed easements agency review and contacted directly but did not comment on the project. However, the applicants will be subject to stipulations within the entry authorizations and easement documents that help ensure the protection of these resources. The unit also contains ADL 50051, an Interagency Land Management Assignment (ILMA) for the Worthington Glacier State Recreation Site, managed by DPOR. On March 27, 2019, DPOR issued a statement of non-objection to the authorization of the proposed easements on the condition that the easements do not authorize permanent surface disturbance within any portion of the recreation site that is subject to Land and Water Conservation Fund (LWCF) encumbrance. The easements are proposed to be located adjacent to, but not through the ILMA.

In consideration of the analysis above, the proposed easements are compatible with the management intent and goals of the plan.

ACCESS

Functional legal access to the state land discussed herein exists via several access easements granted to APSC by the DNR, Division of Oil and Gas (DOG), State Pipeline Coordinators Section (SPCS). These have been serialized by DNR as ADL 206958, ADL 206959, ADL 206960, ADL 206961, ADL 206963, and ADL 227299. These private non-exclusive access easements are granted to APSC, which provided non-objection for the applicants use of these roads via letters

dated January 29, 2019 and April 4, 2019. As the land management authority for the applicable lands, DMLW proposes to issue temporary access easements, collocated with each of the aforementioned ADL's to authorize the applicant's access for the purpose of construction and survey. The additional area⁴ required for these temporary access easements has been included in the entry authorizations, including associated fees; the additional area will not be included in the granted easements. In addition, the applicants propose to access parts of the proposed easements from the Richardson Highway within Sections 2 and 3 of Township 8 South, Range 2 West, Copper River Meridian; the Department of Transportation and Public Facilities (DOT&PF) provided a comment of non-objection to this proposal on April 11, 2019.

The applicants have not requested that legal access be created between the Richardson Highway and proposed utility authorizations. The applicants may apply for an access easement or land use permit for cross country travel at a future date if access to the proposed facilities is needed with vehicles in excess of DMLW generally allowed uses (GAUs; 11 AAC 96.020). 11 AAC 96.020 allows for the use of a highway vehicle with a curb weight of up to 10,000 pounds and a recreational type all terrain vehicle with a curb weight of up to 1,500 pounds. Any vehicle exceeding these limits requires a DNR permit.

The authorizations 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 authorizations proposed herein.

PUBLIC NOTICE & AGENCY REVIEW

Public Notice Summary

Public notice of the applications was conducted from February 14, 2019 to March 19, 2019. The notice was posted to the State of Alaska Online Public Notice System and was sent to the Valdez and Copper Center post offices for display on their notice boards. A total of three comments were received during the public review and is summarized below:

Public Notice Comment & Response

Comment: On January 8, 2019 and February 14, 2019 GCI issued a statement of non-objection on the basis that the applicants agree to indemnify GCI and hold the company harmless for any damage, cost, expense, liabilities and injury to persons or property occurring as a result of the construction, operation and maintenance of the easement. The conditions of the non-objection were accepted by CVEA on January 8, 2019 and by CTVC on February 18, 2019.

Response: DMLW acknowledges the comment.

Comment: On January 29, 2019 and April 1, 2019 APSC issued a letter of non-objection to CVEA and CVTA respectively. The letter addresses both the installation of the utilities and access to the proposed temporary easements granted to APSC for the maintenance of TAPS but restricts the use of these easements to ingress and egress only. In addition, the letter of non-objection establishes a series of stipulations the applicants must adhere to in

⁴ 30.40 acres, more or less.

order to work within the TAPS corridor and access easements. CVEA accepted these stipulations on January 29, 2019 and CTVC accepted on April 4, 2019. Copies of letters are in the administrative record.

Response: DMLW acknowledges the comment.

Comment: On March 18, 2019 Mr. Lowney commented that while he was not opposed to the powerline, he did have concerns about the placement of above-ground vaults and utility poles proposed for placement within a section of the TAPS corridor. Mr. Lowney advised that the placement of above-ground infrastructure would pose a hazard to snowmachine use of the TAPS corridor and that the marking stakes that show the location of infrastructure are commonly obscured by wind or snow. In addition, Mr. Lowney notes that the infrastructure could pose a risk to summer paragliders and suggests that the applicants install buried vaults instead of above ground service infrastructure. In addition, Mr. Lowney stated that he is opposed to the building of a substation on the banks of Stuart Creek, due to the high risk of flooding.

Response: DMLW staff acknowledge the comment and have forwarded Mr. Lowney's concerns to the applicants. While the TAPS corridor is not open to public access, staff recommend that the proposed infrastructure within the corridor should be designed as if public use is allowed, as public land users may stray into the unmarked TAPS corridor. As such, DNR requested that the applicants investigate the possibility of infrastructure burial and if unfeasible outline safety measures that could reduce the possibility of collision. In response the applicants stated that the installation of telephone service infrastructure will be buried but that burial of the electrical junction boxes will be cost prohibitive. The applicants note that the combined height of the box, its concrete foundation pad, and a steel safety pole will be 6 feet 6 inches, which will place it above snow level except at the higher elevations where snow levels will offer substantial cover. The applicants further note that the electrical junction boxes will generally be located off commonly traveled areas along the TAPS corridor, separated from common travel routes by the pre-existing GCI fiber optic line. Furthermore, the corridor contains other pre-existing above ground infrastructure and service facilities, as such the proposed infrastructure is in keeping with pre-existing land use. However, the applicants have offered to install additional warning signs at access points and/or along the route.

DMLW concurs with the applicant's suggestions and requests that the applicants install additional warning signs at access points and along the route as suggested. In addition, DMLW notes that Stuart Creek is located on Federal lands and is therefore outside the scope of this decision. Mr. Lowey's comments have been forwarded to the Bureau of Land Management (BLM).

No other comments were received.

Agency Review Summary

Agency review of the applications was conducted from February 14, 2019 to March 19, 2019. The notice was sent to the following recipients:

State Agencies:

- DNR, DPOR, SHPO; and Permitting
- DNR, DOG, SPCS; and Permitting
- DNR, DMLW, Water Section; Survey Section; Realty Services Section; Land Sale Section; and Mining Section
- DNR, Division of Forestry
- DNR, Alaska Mental Health Trust Land Office
- Alaska Department of Environmental Conservation, Division of Environmental Health, Drinking Water Program
- Department of Environmental Conservation (DEC), Division of Water, Storm Water Program, Drinking Water, Permits
- ADF&G, Habitat; and Division of Wildlife Conservation, Access Defense
- DOT&PG, Northern Region Office
- Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs
- Copper River Valley Soil and Water Conservation District

Federal Agencies:

- United States Army Corps of Engineers
- BLM, Glenallen Field Office

Regional and Local Entities:

- Ahtna Inc,
- City of Valdez

A total of six comments were received during the agency review and are summarized below:

Agency Review Comment & Response

Comment: On February 22, 2019 DMLW Mining Section issued a statement of no comment or objection.

Response: DMLW acknowledges the comment.

Comment: On March 18, 2019 DEC responded with a request that the applicants adhere DEC's recommendation for General Construction Projects, where applicable.

Response: DMLW acknowledges the comment and has forwarded DEC's recommendations to the applicants.

Comment: On March 19, 2019 SPCS responded with a request that DMLW require the following:

- That the easement parameters be expanded to allow for construction and maintenance of electric and communication cables as well as associated junction boxes.
- That the applicants adhere to the Joint Pipeline Office Brushing Policy for TAPS.
- That the applicants obtain all required permits.
- That the applicants consult and coordinate with APSC prior to the start of construction activities to ensure pipeline related activities will not be affected.

On April 10, 2019 SPCS provided additional comments requested that DMLW require the following:

- That the applicants provide a Horizontal Directional Drilling (HDD), Mud Management and Disposal Plan;
- That the easements provide adequate width after construction for operation and maintenance, including turn-arounds; and
- That the applicants notify SPCS of any changes to the plan of development.
- That the applicants amend the development plan to include the following statement: "Fish Stream Buffers: Adjacent to designated fish streams, vegetation will not be cut shorter than five feet high within five feet of the ordinary high-water line of each bank".

Response: DMLW has forwarded SPCS's comments to the applicants. Regarding SPCS's specific questions:

- DMLW staff recommend that the width of the applicant's requests be changed to 30 feet in accordance with 11 AAC 51.015 to allow for adequate space for construction, operation and maintenance of infrastructure, including junction boxes. A thirty foot wide easement also provides adequate space for turning around vehicles.
- While it is not within the scope of this decision for DMLW to enforce the Joint Pipeline Office Brushing Policy for TAPS or require that the applicants consult directly with APSC, the applicants have indicated their intent to follow SPCS's brushing policy as both these stipulations are part of the APSC non-objection stipulations. In addition, the applicant has stated that where possible they will maintain a 20-foot buffer in addition to the prescribed 5-foot buffer from stream crossing or waters. Furthermore, the proposed infrastructure will be installed via HDD and is unlikely to impact bank side vegetation.
- The applicants have stated that DEC and ADF&G will be issued copies of the HDD plan so that those agencies may review said plan for the need for permitting through those offices. Should DEC decide that the mud used as part of HDD operations is a pollutant and requires off-site disposal the applicant will be required to follow DEC permitting requirements. If the drilling mud is not a pollutant, disposal within the easement is allowable.

- DMLW staff concur that the applicant should obtain all required permits; while DMLW's standard stipulations include language that states the failure to obtain other authorizations may be considered a violation of the terms of a DMLW authorization, the coordination of said acquisition is outside the scope of this decision.
- The development plan for the proposed easements will allow for the construction, survey, operation and maintenance of utility infrastructure; DMLW will include SPCS on any agency notice that may be issued if any change is proposed to these development plans.

Comment: On March 27, 2019, DPOR issued a statement of non-objection noting that as the proposed infrastructure was to be installed via directional drilling, the proposed easement would not constitute a conversion of the Worthington Glacier State Recreation Site (ADL 50051) from its status as an outdoor recreation site under the Land and Water Conservation Fund (LWCF) section 6(f). In addition, DPOR requires that the applicants contact DPOR prior to construction should the development plan change, and vegetation/ground surface disturbance be necessary.

Response: The proposed easement alignment runs adjacent to, but not through the portion of the Worthington Glacier Viewing Area ILMA that is LWCF encumbered. The development plan for the proposed easements will allow for the construction, survey, operation and maintenance of utility infrastructure; DMLW will include DPOR on any agency notice that may be issued if any change is proposed to these development plans.

Comment: On April 1, 2019 DOT&PF issued a statement noting the following:

- Portions of the proposed infrastructure are within a DOT&PF right of way for the Richardson Highway that is not presently used as the primary alignment of the road. The applicants have identified these portions of right of way as abandoned. DOT&PF maintains management authority of these areas and does not grant the applicants authority to install utility infrastructure in these areas.
- Sections of the line within the Thompson Pass maintenance and operations station (ADL 200032) and where the line crosses the Richardson Highway at mile post 40.5 and 34.5 will be handled under a DOT&PF utility permit.
- The applicant's development plan shows a service connection to the Thompson Pass airport; this area is outside the scope of DOT&PF's management authority.

On April 11, 2019, DOT&PF granted a statement of non-objection to the applicants to use existing access points at mile post 41, 42, and 46 on the Richardson Highway. However, the applicant is prohibited from storing equipment and construction materials within the right of way without prior authorization. In addition, any traffic controls or warning signs in the DOT&PF right of way must be approved with a lane closure permit.

Response: DMLW acknowledges the comment and has forwarded DOT&PF's comments to the applicants. DMLW notes:

- That land on which the DOT&PF right of way described above is located is Federally managed and is outside the scope of this decision.⁵
- Furthermore, portions of the utility infrastructure within DOT&PF right of way for the Richardson Highway and ADL 200032 are managed by DOT&PF and outside the scope of this decision.
- No utility line exists or is proposed to be constructed to the Thompson Pass landing strip.

Comment: On April 4, 2019 ADF&G issued a statement expressing a concern that pressurized drilling muds could be release into a fish stream in the course of HDD. ADF&G asks that the applicants apply for Fish Habitat Permits for these bores and states that ADF&G will review the projects drilling mud management plan.

Response: DMLW acknowledges the comment and has forwarded ADF&G's comments to the applicants.

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 authorizations 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 authorizations.

Environmental contamination risk associated with the proposed easements is minimal. 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 authorizations 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 authorizations encourages the development of the State's resources. The authorizations considered herein will provide a direct economic benefit to the state in the form of land use fees. Additionally, the proposed easements facilitate the expansion of the public utility system and facilitates the operation of a private industrial facility, which will promote conditions for economic development, this providing an indirect benefit to the State.

In consideration of these factors, and because there are no competing requests for authorization, approval of the easements will provide the greatest economic benefit to the State.

⁵ The applicable portions of the relocated DOT&PF right of way are within sections 24, 23, 26, 34, 35 of Township 7 South, Range 1 West, Copper River Meridian, Alaska.

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 the easements considered herein be granted for an indefinite term from the effective date of this decision as the need for the easements can be expected to exist as long as the adjoining land requires utility service.

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

Staff recommend that the authorizations considered herein each be a public utility easement granted individually to the applicants, as the applicants each hold a Certificate of Public Convenience and Necessity from the Regulatory Commission of Alaska and are required to provide service under these certificates within the specified service area. Easements created by DMLW are non-exclusive unless described otherwise.

The applicants propose to use several TAPS access roads to temporarily access the pipeline corridor. Access roads proposed for use cover 30.4 acres. The applicants also propose to use directional boring at several locations and have requested construction easements for equipment staging at the end of each bore hole. The applicants have requested seven staging areas 30 feet by 100 feet in size for a total of 0.5 acres. Staff have included the additional area of the access roads and bore staging areas in the entry authorization fee calculation. These areas are not included in the authorized easement dimensions as no permanent easement has been requested over these lands. Should these or other access easements be required for future maintenance and/or development, the applicants must apply for a separate authorization.

DMLW authorizations may not be transferred or assigned without written approval from DMLW. DMLW reserves the right to amend the terms, conditions and/or stipulations of the easement prior to assignment.

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 applicant 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. Staff recommend that the applicants be required to submit a total performance guaranty in the amount of \$39,700 to ensure completion of entry authorization requirements. This total performance guaranty is to be divided between the applicants. Staff recommend that each applicant submit be required to submit a separate performance guaranty of \$19,850. These funds will also serve as survey deposits (per AS 38.05.860) and may be reduced one time during the term of the entry authorizations 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. The performance guaranties shall remain in place during the term of the entry authorizations 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 authorizations. The performance guaranties may also be adjusted to reflect updates and changes in the associated project, and the applicants may be required to provide an additional performance guaranties if DMLW determines there is additional risk to the State. The performance guaranties 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 authorizations. Additional performance guaranties may be required for an extension of the entry authorizations 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.

Performance Guaranty

Two performance guaranties in the amount of \$19,850 typically in the form of a bond or other security, will be required, one from each applicant.

INSURANCE

Staff recommend that the applicants each be required to submit proof of insurance in an amount the insurance company determines necessary to protect both the State and the applicants from risks associated with the planned activities under the entry authorization for ADL 233359 or ADL 233379. The applicants 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 applicants 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 by each applicant 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 applicants will be required to request survey instructions prior to issuance of the entry authorizations. 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. Final easements will not be issued until the as-built survey has been approved by DMLW. The proposed easements may be displayed on the same survey only with the approval of the DMLW Survey Section. The applicants are required to submit a preliminary draft as-built survey a minimum of one year prior to the expiration of the entry authorizations to allow adequate time for DMLW's review and approval of a final as-built survey.

Staff recommend that the easement area surveyed under these instructions shall be tied to the TAPS lease survey (DNR casefile as-built 63574 / Valdez Recording District Plat 81-1) where feasible.

Specifically, while the survey shall be designed to encompass any installed improvements, the survey shall also generally align with the TAPS survey and shall be co-located with and shall share a common outer boundary with the TAPS survey where feasible.

FEES

The applicants have requested a waiver of all land use fees for this project in accordance with AS 38.05.850(b). Consideration of the fee waiver request 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 ADL 233359 and ADL 233379 . The Director's determination is made part of this Decision for appeal purposes.

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 and will be subject to non-sufficient fund and late payment penalty fees.

Fee	Regulation	Amount	Applicant
Annual entry authorization land use fee ⁶	11 AAC 05.070(b)(2)(I)	\$8,640 ⁷	CVEA
Annual entry authorization land use fee	11 AAC 05.070(d)(2)(I)	\$8,640	CVTA
One Time Land Use Fee ⁸	11 AAC 05.070(d)(2)(C)	\$32,732	CVEA
One Time Land Use Fee	11 AAC 05.070(d)(2)(C)	\$32,732	CVTA

Additionally, the applicant shall each pay applicable document recording fees prior to DMLW's execution and recordation of each applicant's specific easement document.

ENTRY AUTHORIZATION

The entry authorization is an interim authorization issued when a survey is necessary prior to easement issuance. Staff recommend that each applicant be issued an entry authorization 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 has not supplied DMLW with a draft as-built survey within a minimum of one year prior to the expiration of entry authorization. The extension of the entry authorizations may be granted at the written request of

⁶ Annual entry authorization land use fee, \$120 per acre rounded up to the nearest acre, with a \$240 minimum

⁷ 40.3 acres of permanent easement, 30.4 acres of access road and .5 acres of staging area. The combined total of these acreages has been rounded up to 72 acres.


⁸ one-time land use fee, \$0.56 per linear foot; fee may vary based on DNR-approved survey.

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 authorizations and certify there have been no changes to the approved development plans. Staff recommend that the entry authorizations not be granted until the following deliverables have been provided to DMLW from each applicant, as described or recommended above:

<u>CVTA</u>	<u>CVEA</u>
\$8,640 (One-year entry authorization fee)	\$8,640 (One-year entry authorization fee)
Evidence of having made a request for survey instructions from DMLW Survey Sections	Evidence of having made a request for survey instructions from DMLW Survey Sections
Insurance	Insurance
Performance Guaranty of \$19,850	Performance Guaranty of \$19,850

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 easements as described above, on the condition that all stipulations are followed as described in the attached authorizations.


 Stuart Greenfield, Natural Resource Specialist
 DMLW Southcentral Regional Land Office


 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 these projects are consistent with the overall classification and management intent for this land, and that issuance of the authorizations 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 these authorizations.

This decision may be rescinded by written notification if, after 60 days from the effective date of this decision, the applicants has not completed all requirements outlined in this decision for issuance of the authorizations. 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

Date 6-13-19

ATTACHMENTS

- Two draft entry authorizations
- Two draft easement documents
- Fee waiver memo

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.