STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
Northern Regional Land Office

Regional Manager's Decision

ADL 421598
United Utilities, Inc.
Easement Application
AS 38.05.850

REQUESTED ACTION

On January 25, 2021, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), received an application for a public utility easement from United Utilities, Inc. ("UUI") for telecommunication services on State-owned, DMLW-managed uplands near Manley Hot Springs, Alaska. The applicant has requested a public easement approximately 408 feet long, 30 feet wide, and .30 acres in size.

RECOMMENDED ACTION

NRO recommends issuing, in perpetuity, a public utility easement approximately 408 feet long, 30 feet wide, and .28 acres in size, more or less. NRO recommends issuing the easement directly, as construction is complete and a survey has already been performed.

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 421598.

LOCATION INFORMATION

Geographic Location

The applicant has requested that DMLW authorize a public utility easement about 3 miles northwest of Manley Hot Springs.

Township Range

The applicant has applied to use State-owned, DMLW-managed uplands within Section 36, Township 3 North, Range 16 West, Fairbanks Meridian, as shown on EPF 20190021.

Other Land Information

Municipality: None.
Regional Corporation: Doyon Regional Corporation

TITLE

The State of Alaska holds title to lands within 36, Township 3 North, Range 16 West, Fairbanks Meridian, Alaska under Patent #50-91-0359, granted June 21, 1991, serialized under DNR file number GS 480. Standard title restrictions apply.

Any State-owned, DMLW-managed lands, or State-selected lands that may be managed by DMLW in the future that are crossed by the authorization considered herein at the time of this decision, which are omitted from this list, and are subsequently identified, are included in this decision. Navigable and public water determinations are subject to change pursuant to future findings.

THIRD PARTY INTERESTS

There are no third party interest impacted by the utility easement. The easement would allow for utility connection to ADL 414450, a public and charitable lease issued to the applicant for a communication site.

PLANNING & CLASSIFICATION

The easement is within Yukon Tanana Area Plan Unit T-27, which is designated Habitat and Public Recreation-Dispersed; those designations correlate to classifications of Wildlife Habitat Land and Public Recreation Land. Each designation allows for utilities if habitat or recreation functions respectively can be maintained. The modest level of infrastructure here is unlikely to have any significant effect on habitat or recreation functions. Management intent for this particular unit allows for installation of certain types of utilities that provide a general public benefit.

Appropriate uses on land so designated includes “placing easements on access routes” (p. 3-7). Issuing this public easement provides a general public benefit and is consistent with YTAP.

ACCESS

Functional access to the state land discussed herein exists via an easement obtained separately by the applicant from Bean Ridge Corporation (the local village corporation).

BACKGROUND

UUI is a wholly owned subsidiary of GCI, one of the largest telecommunications providers in the state of Alaska. UUI, then independent, originally applied to DNR-DMLW on July 20, 1990 under ADL 414450 to construct and maintain a communications site on Manley Dome under a lease. The originally proposed lease location was on Bean Ridge Corporation selected lands; a year later, the location was changed to one of the subsidiary summits of Manley Dome on state land that was not selected by Bean Ridge.

When they applied for the lease, UUI also applied for an easement to service it under ADL 414449. A private non-exclusive easement under ADL 414449 was granted to UUI on January 15, 1992, within both Section 1, Township 2 North, Range 16 West, and Section 36, Township 3 North, Range 16 West, Fairbanks Meridian. The easement was originally set to expire upon expiration of the communications site lease. On July 12, 2018, the easement was amended to exclude Section 1 lands, which, though originally tentatively approved to the State of Alaska on April 3, 1964, were ultimately patented to Bean Ridge Corporation on August 10, 2012. The same amendment set the expiration of the easement to a date certain of December 31, 2020 and slightly altered the position of the easement within Section 36 to match communication and power lines that had been moved. As field work was already being conducted in connection with the infrastructure move, UUI surveyed the installed infrastructure within Section 36 according to instructions issued by DNR-DMLW's Survey Section. An as-built record of survey was completed under EPF 20190021, showing the amended location of ADL 414449. The amended location and dimensions of ADL 414449 as shown on EPF 20190021 constitute the presently applied-for location and dimensions of ADL 421598.

UUI applied for a public utility easement on January 25, 2021. Requested dimensions were 408 feet long, 30 feet wide, and .30 acres in size.

PUBLIC NOTICE & AGENCY REVIEW

Public Notice Summary

Public Notice of the application was conducted from February 26, 2021 to March 29, 2021. The notice was posted to the State of Alaska Online Public Notice System. Public notice was also sent to Bean Ridge Corporation via U.S. mail.

Public Notice Comment & Response

No comments were received during the public notice period.

Agency Review Summary

Agency Review of the application was conducted from February 26, 2021 to March 29, 2021. The notice was sent to the following recipients:

Parks OHA Review Compliance
Adam Dubour (Alaska Department of Fish and Game)

Agency Review Comment & Response

No comments were received.

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 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 public telecommunications 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

UUI has requested a public utility easement to service a communications site on Manley Dome. The original easement was issued as a private non-exclusive easement that also crossed state land selected by Bean Ridge Corporation (lands within section one--*see Background, above*). As that land has since been conveyed to Bean Ridge Corporation, this successor easement is much shorter; to wit, 408 feet instead of 1799 feet. The width of the easement will also change to thirty feet (rather than the prior twenty), to match the current standard public utility easement width set forth in 11 AAC 51.015(d)(1)(A). As functional access for this utility presently exists, issuing a public utility easement is appropriate. Finally, the area of the easement will be .28 acres, more or less, to more precisely match the survey performed under EPF 20190021.

UUI requested a term of 15 years with an option to terminate at the same time as the lease (ADL 414450). The easement will be issued in perpetuity. DNR-DMLW retains the discretion to terminate a public easement that is not being used or is no longer necessary. While this public easement is likely to be used by UUI only, it will be generally available for public utility uses. Should UUI wish to restore the site and assign the easement to another public utility or relinquish the easement to DNR-DMLW, that may occur with DNR-DMLW written approval. Hence, UUI may always request of DNR-DMLW to assign or relinquish an easement that they no longer need, but DNR-DMLW retains the ability to evaluate whether appropriate restoration has occurred and/or whether the public easement remains useful for UUI or any other public utility.

Ordinarily DNR-DMLW would, prior to easement issuance, issue an entry authorization for construction and survey. In this case, UUI has already constructed the easement infrastructure and performed a survey under EPF 20190021. As the activities that would normally occur during the period of entry authorization have already occurred, no entry authorization will be issued at this time. Instead, DNR-DMLW will proceed directly to easement after expiration of the appeal period. DNR-DMLW reserves the right to require an entry authorization or rescind this decision if an easement is not timely executed.

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, appraisal, etc.), restoration (interim and final), and any associated costs after termination or expiration of the easement. In this case, I recommend waiving the performance guaranty, as construction and survey has already been performed. DNR-DMLW reserves the right to later require a performance guaranty if additional work is required prior to issuance of the final easement.

INSURANCE

As construction and survey has already been performed and no entry authorization is anticipated, the requirement for insurance during the entry authorization is hereby waived. DNR reserves the right to require insurance at any time during the term of the easement, if later required.

SURVEY

A DMLW-approved as-built record of 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 has already performed a DNR-DMLW approved survey under EPF 20190021, which is sufficient to depict ADL 421598. Though the survey shows the final amended location of ADL 414449, the location and dimensions are the same as ADL 421598.

FEES

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.

Entry Authorization Fee: Not applicable at this time. Fees may apply if an entry authorization is later required.

Easement Issuance Fee: $0.56 per lineal foot, one-time fee, per 11 AAC 05.070(d)(2)(C). The anticipated easement length is 408 feet. The anticipated fee is therefore $228.48 and shall be paid prior to easement issuance.

Recording fees may also apply and will be determined later.

ENTRY AUTHORIZATION

The entry authorization is an interim authorization issued when a survey is necessary prior to easement issuance. Construction and survey has already been performed, so no entry authorization will be issued at this time.

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 my recommendation to issue 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

Date 8/31/2021

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

Date 8/31/2021

ATTACHMENTS

- EPF 20190021 (As-built Record of Survey)
- 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.