

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
Southcentral Regional Land Office

Regional Manager's Decision

ADL 233823
Department of Transportation & Public Facilities
Public Utility Easement
Traffic Signal Pole

REQUESTED ACTION

On August 5, 2021, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), received an application for an easement from the Department of Transportation and Public Facilities (DOT&PF) to authorize a previously constructed traffic signal pole on State-owned, Alaska Court System (ACS)-managed lands in Anchorage, Alaska. The signal pole is located on a parcel of state land that was acquired for the express use of ACS and is characterized by DMLW's Management Right Assignment, ADL 232404. The proposed easement is approximately 10 feet in length and 10 feet in width for a total area of 0.002 acres more or less, as depicted in the development plan. See Figure 1.

According to stipulation 1H of ADL 232404, ACS, being the Holding Agency, "does not have statutory authority to hold title to land or the land interest in the name of the State." Stipulation 2D of that same management right assignment states that:

If a disposal of any interest (such as a right-of-way, easement, land use authorization, permit etc.) is requested on or through the land or land interest, if the Holding Agency has statutory authority to grant such a right and if there are no restrictions of title preventing such disposal, then the Holding Agency may do so upon obtaining written concurrence from the DMLW Director within 60 days of such a request. In the absence of such statutory authority, the requestor must obtain the interest from DMLW, which will coordinate with the Holding Agency as to alignment and any special stipulations. The Holding Agency has the right to withhold concurrence and appeal to the DNR Commissioner if it is unable to satisfactorily resolve a conflict that will adversely affect its mission.

ACS's concurrence for SCRO's issuance of the requested easement was provided on November 9, 2021.

RECOMMENDED ACTION:

Approval of an easement with the following parameters:

- Length: 10 feet
- Width: 10 feet
- Acreage: Approximately 0.002

- Term: In perpetuity. The term of this easement will survive if termination of the Management Right Assignment, ADL 232404, occurs.
- Grantee: DOT&PF
- Type of easement: Public Utility Easement

SCOPE OF DECISION

The scope of this decision is to determine if it is in the State's interest to authorize an easement for the proposed use. The scope of administrative review for this authorization is limited to (1) reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and regulations; (3) facts pertaining to the land or resources; and (4) issues that are material to the determination that issuing the authorization is in the interest of the State of Alaska. All other aspects of the applicant's project are outside the scope of this decision.

STATUTORY AUTHORITY

This easement application is being adjudicated pursuant to AS 38.05.850 and the Alaska Land Act as amended.

ADMINISTRATIVE RECORD

The administrative record for the proposed action consists of the Constitution of the State of Alaska, the Alaska Land Act as amended, applicable statutes and regulations referenced herein, the 2016 Management Right Assignment to ACS ADL 232404, other classification references described herein, and the casefile for the application serialized by DNR as ADL 233823.

LOCATION INFORMATION

Geographic Location

Municipality of Anchorage, Alaska.

Meridian Township Range Section

Section 13, Township 13 North, Range 4 West, Seward Meridian.

TITLE

Title Report No. 22146 was received from the DNR DMLW Realty Services Section on February 15, 2022. The State of Alaska holds title to the subject lands per Anchorage Recording District document 94-038381-0. The associated DNR selection casefile is OSL 1089.

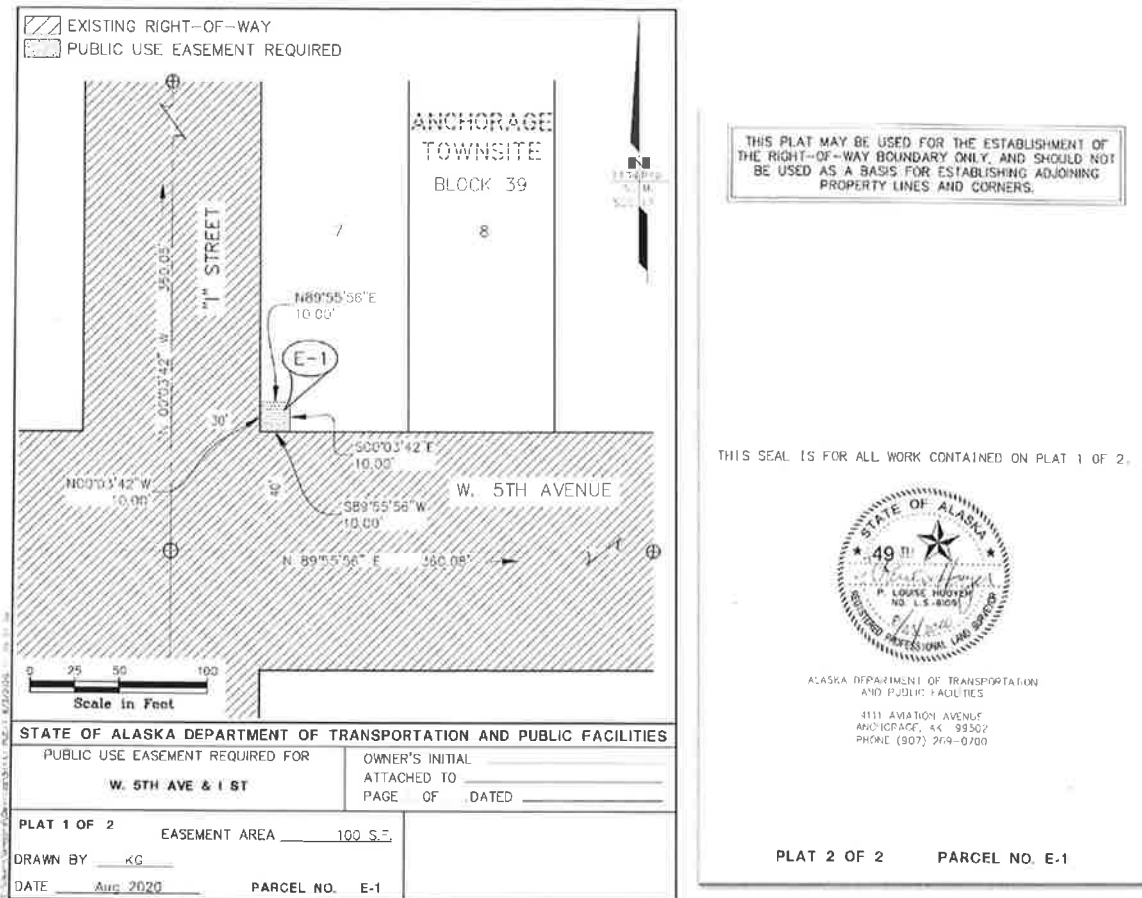
THIRD PARTY INTERESTS

The subject parcel is occupied by ACS per ADL 232404, Management Right Assignment. On November 9, 2021, ACS concurred with the request to grant the requested easement.

ACCESS

Functional and legal access to the project site exists via 5th Avenue and I Street within the Municipality of Anchorage, Alaska

FIGURE 1 – A map depicting the requested easement area. See the site labeled “E-1” below.



PLANNING & CLASSIFICATION

The project area affected by this proposal was purchased by the State of Alaska DNR and assigned to ACS in 1994 per DNR file OSL 1089. The site is addressed in DMLW's Management Right Assignment ADL 232404 but has not been made subject to a specific classification per AS 38.04.005(a) and has not been included in a DNR Area Plan. Therefore, no DNR management intent language exists outside of OSL 1089 and ADL 232404. Neither file included provision for subsequent management actions such as this proposed easement. However, per 11 AAC 55.040(i)(6)(B), an easement can be issued for a telephone, electric, or other utility line less than 1,500 feet in length because SCRO has determined that the improvement constitutes "minor access for the purpose of AS 38.04.065(f), based on the insignificant effect it has on the land and resources..." at this location. In addition, ACS, as manager of the subject property, has provided their concurrence for authorization of the easement proposed.

PUBLIC NOTICE & AGENCY REVIEW

Public Notice Summary

Public notice of the application was conducted between October 25, 2021 and November 24, 2021. The notice was posted to the State of Alaska Online Public Notice System and was sent to the following recipients:

- Eastchester Post Office
- Midtown Post Office
- Spenard Post Office
- Cook Inlet Region Inc.

Public Notice Comment & Response

No comments were received during the public review period.

Agency Review Summary

Agency review of the application was conducted from October 25, 2021, to November 24, 2021. The notice was sent to the following recipients:

Local Agencies

- Municipality of Anchorage, Department of Project Management & Engineering Right of Way Acquisition Section
- Municipality of Anchorage, Heritage Land Bank
- Municipality of Anchorage, Acting Municipal Traffic Engineering Department
- Municipality of Anchorage, Development Services

State Agencies:

- DNR, DMLW, Survey Unit
- DNR, DMLW, Land Conveyances Section
- DNR, DMLW, Realty Services Section
- DNR, DMLW, Mining Section
- DNR, DMLW, Water Resources Section
- DNR, Division of Parks and Outdoor Recreation (DPOR), Permitting
- DNR, DPOR, Office of History and Archeology
- DNR, Division of Forestry
- DNR, Division of Oil and Gas, State Pipeline Coordinators Section
- DNR, Division of Oil and Gas, Permitting
- DNR, Soil and Water Conservation District
- DNR, Mental Health Trust Authority, Trust Land Office
- Alaska Department of Environmental Conservation (DEC), Division of Environmental Health, Drinking Water Program
- DEC, Division of Environmental Health, Solid Waste Program
- DEC, Division of Spill Prevention, Contaminated Sites Program
- DEC, Water, Alaska Pollutant Discharge Elimination System Program & Wastewater
- Alaska Department of Transportation and Public Facilities (DOT&PF), Statewide Right-of-Way
- Alaska Department of Fish and Game (ADF&G), Division of Habitat

- ADF&G Wildlife Conservation, Access Defense
- Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs, Local Government Assistance
- Alaska Court System, Facilities Department

Federal Agencies:

- U.S. Army Corps of Engineers, Alaska District

Agency Review Comment & Response

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

Comment: On October 25, 2021, DNR, DMLW, Land Conveyance Section submitted a comment of non-objection.

Response: DMLW acknowledged the comment.

Comment: On October 26, 2021, DNR, DMLW, Realty Services Section provided input in respect to land status information.

Response: DMLW acknowledged the comment.

No other comments were received during the comment period. ACS provided concurrence for the proposed easement on November 9, 2021.

ENVIRONMENTAL CONSIDERATIONS

It is recommended that fuel, lubricants, and other hazardous materials be restricted to those necessary and be contained within tools and vehicles when equipment is necessary for maintenance activities. Additionally, no fuel or other hazardous materials should be authorized to be stored on site.

ECONOMIC BENEFIT & DEVELOPMENT OF STATE RESOURCES

The Region considered three criteria to determine if this project provides the greatest economic benefit to the State and development of its natural resources. These criteria include direct economic benefit to the State, indirect economic benefit to the State, and encouraging development of the State's resources to provide capital.

The project will help improve the safety of public access activities within downtown Anchorage, thereby enhancing conditions for local economic activities and providing an indirect benefit to the state. The proposed use of the described lands is consistent with the legislative intent of AS 38.05.850.

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 easement considered herein will be granted for an indefinite term from the effective date of this decision for maintenance of the specified infrastructure. The need for the easement can be expected to last for as long as the traffic signal pole is required.

PERFORMANCE GUARANTY

In consideration of the low risk associated with the proposed authorization and the applicant's status as a state agency, a performance guaranty shall not be required for the subject easement.

INSURANCE

In consideration of the low risk associated with the proposed authorization and the applicant's status as a self-insured state agency, insurance will not be required at this time.

SURVEY

The August 2020 diagram depicting, Parcel No. E-1 that is titled "Public Use Easement Required for W. 5th Ave and I Street" that was provided by DOT&PF is sufficient for the proposed easement. Therefore, no additional survey work will be required.

FEES

Per 11 AAC 05.020(b), the fees for this authorization are waived because the applicant is a state agency, and the request is in the public interest.

ENTRY AUTHORIZATION

No entry authorization will be issued for ADL 233823 because installation of the described traffic signal pole was accomplished under SCRO permit LAS 33254.

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 recommended that DMLW issue an easement as described above, subject to all required terms and conditions.

Nathaniel T. Crocker

Nathaniel Crocker, Natural Resource Specialist
DMLW Southcentral Regional Land Office

4/15/2022

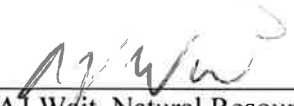
Date

Regional Manager's signature follows

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.



AJ Wait, Natural Resource Manager 2
DMLW Southcentral Regional Land Office

4/20/22

Date

APPEAL

A person affected by this decision may appeal it in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of "issuance" of this decision, as defined in 11 AAC 02.040(c) and (d) and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-(907) 269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. 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.