STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
Northern Regional Land Office

Preliminary Decision
ADL 419438 Expansion of Designated Material Site
Negotiated Material Sale

This Preliminary Decision (PD) is the state's preliminary best interest finding regarding a proposed disposal of interest in state land. The public is invited to comment on this PD. The deadline for commenting is **5:00 pm, Monday, November 28, 2022**. Please see the Public Notice section of this decision for requirements related to submitting comments for consideration.

Requested Action

The Department of Transportation and Public Facilities (DOT) submitted an application requesting expansion of designated material site ADL 419438, also known as the Panguingue Creek Pit. The material site is located near milepost (MP) 252.5 of the Parks Highway, north of Healy.

DOT initially requested that designated material site ADL 419438 be increased from approximately 22.5 acres to approximately 41.5 acres. DOT later amended their request to increase the designated material site from 22.5 acres to approximately 36 acres.

Proposed Action

The Department of Natural Resources (DNR), Division of Mining, Land & Water (DMLW), Northern Regional Land Office (NRO) proposes to expand the designated material site, from approximately 22.5 acres to approximately 36 acres, and amend the boundaries of the designated site, which will allow for subsequent issuance of material sale contracts under AS 38.05.550-565.

Scope of Decision

The scope of this decision is to determine if it is in the state's best interest to designate the expanded area as a material site and to determine what, if any, additional operating requirements should be implemented for material sale contracts issued from the material site. The scope is based on the statutes, regulations and other facts contained in case file ADL 419438, and the body of this decision.

Authority

The file is being adjudicated pursuant Alaska Statutes AS 38.05.035(e) (best interest finding), AS 38.05.550-565 (material sales), AS 38.05.945 (notice), and AS 27.19 (reclamation).

The authority to execute the PD and the Final Finding and Decision (FFD) has been delegated to the Regional Managers of DMLW.

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 here-in, the 2014 Yukon Tanana Area Plan and other classification references described herein, and the casefile for the application serialized by DNR as ADL 419438.

Location and Legal Description

Location: The material site is located north of Healy, near MP 252.5 of the Parks Highway as depicted in Attachment A, Location Map.

Legal Description: Within the SW1/4 of Section 35 and the SE1/4 of Section 34, Township 11 South, Range 8 West, Fairbanks Meridian, containing approximately 36 acres.

USGS Map: Healy (D-5), 1:63,360

Borough/Municipality: The site is located within the Denali Borough.

Regional/Village Corp: Doyon, Limited is the regional corporation. No corporation lands are impacted.

Title

The State of Alaska received title to lands within Section 34 and 35 of Township 11 North, Range 8 West, Fairbanks Meridian, Alaska, under DNR casefile GS 687. Title to Sections 34 and 35 was received on August 5, 2005, under Patent Number 50-2005-0328.

Adjacent Landowners

The Denali Borough is a landowner to the west of this project. The Denali Borough was included in both agency reviews and did not provide any comments of objection to the proposed expansion.

The Parks Highway, which is managed by DOT, is immediately adjacent along southwestern edge of the site.

The site is otherwise surrounded by state land.

Third Party Interests

The Alaska Gasline Development Corporation (AGDC) hold Right-Of-Way (ROW) leases adjacent to the proposed material site. DNR met with AGDC and the State Pipeline Coordinator's Section (SPCS) and discussed the compatibility of the material site expansion with these ROW leases and found that the amended material site expansion would be compatible.

To the north side of the proposed material site run utility easements to Golden Valley Electric Association (GVEA) and GCI Communications Company (GCI). Notice of this decision will be sent to both entities.

Planning and Classification

The existing material site and proposed expansion is located within the Yukon Tanana Area Plan (YTAP), in unit number P-76, which is co-designated as Habitat and Public Recreation-Dispersed. The management intent for this unit also identifies the subject material site as "an appropriate use [which] can continue to operate, consistent with the requirements of its authorization." (YTAP, 3 – 115).

Land designated Habitat "applies to areas of varied size for fish and wildlife species during a sensitive life-history stage where alteration of the habitat or human disturbance could result in a loss of a population or sustained yield of a species or that contain a unique or rare assemblage of a single or multiple species of regional or statewide significance." (YTAP, 3 – 6). Habitat land "is intended to remain in state ownership, and is to be maintained in an undisturbed, natural state except for improvements related to public health, safety, habitat restoration or rehabilitation, and public recreation" except that "utilities and roads may be appropriate with appropriate design if habitat functions can be maintained." (YTAP, 3 – 6).

Land designated Public Recreation-Dispersed "applies to those areas that offer or have a high potential for dispersed recreation or tourism and where desirable recreation conditions are scattered or widespread rather than localized. Developed facilities are generally not necessary, other than trails, trail signs, primitive campsites, and other minor improvements" (YTAP, 3 – 7). Public Recreation-Dispersed land is typically not considered appropriate for land use authorizations "unless necessary for public health, safety or recreation." However, uses for "utilities and roads may be appropriate with appropriate design if recreation functions can be maintained." (YTAP 3 – 7).

In addition to creating specific land classifications for land use planning purposes, YTAP also recognizes the importance of material sites and allows the state to "determine that the development of material resources is appropriate, with appropriate stipulations,"(YTAP 2-32) and further notes that the sale of materials for use in construction "are necessary to and are a type of use that is often associated with the construction and maintenance of roads, and therefore an essential component of the road construction process." (YTAP, 2 - 33). When material sites are requested, there is a preference given to existing material sources. (YTAP, 2 - 32).

The proposed expansion would increase the size of a designated material site which has been identified as "an appropriate use [which] can continue to operate, consistent with the requirements of its authorization." (YTAP, 3 – 115). DOT is applying to expand the designated material site to increase the amount of material that can be extracted which will support road development and maintenance. Supported road development and maintenance will contribute to public safety. The location of the proposed expansion is adjacent to an existing material site which minimizes disturbances to habitat which is preferred under YTAP. In addition, no habitat concerns were

received from Alaska Department of Fish & Game (ADF&G). Considering these factors, the proposed material site expansion is consistent with the management intent of the YTAP.

Traditional Use Finding

The subject material site and area of expansion are all located within the Denali Borough. A traditional use finding is not required for sites located within a borough.

Access

Physical and legal access to the material site is available on the southern boundary of the material site via the Parks Highway.

Waterbodies

The site is located approximately 300 feet from Panguingue Creek. This 300-foot area between the site and Panguingue Creek will be maintained as a buffer zone and no material extraction will occur in this area to prevent impacts to the creek.

Public Trust Doctrine

Pursuant to AS 38.05.126, all authorizations for this site will be subject to the principles of the Public Trust Doctrine; specifically, the right of the public to use navigable waterways and the land beneath them for: navigation, commerce, fishing, hunting, protection of areas for ecological studies, and other purposes. These rights must be protected to the maximum extent practicable while allowing for the development of this project. As such, DMLW is reserving the right to grant other authorizations to the subject area consistent with the Public Trust Doctrine.

Mineral Orders

Mineral Closing Order 116A01 closes to locatable mineral entry portions of state land within the proposed material site.

Environmental Risk

DOT submitted an Environmental Risk Questionnaire with their application. There are no known environmental contaminants within the subject material site. No storage tanks will be on site. Other than fuels, coolant, lubricants, and hydraulic fluids normally contained in a piece of equipment for its basic operation, the applicant will not generate, use, store, transport, dispose of or otherwise come in contact with any materials considered toxic or hazardous. Compliance with standard material sale contract operating requirements regarding environmental operations and procedures will minimize environmental risks.

Agency Comments

The DMLW conducted agency review from January 10, 2022, to January 24, 2022. The following agencies were solicited for comments regarding this proposed material site designation:

Bob Henszey, US Fish and Wildlife Service (USF&WS)
Ellen Lyons, US Army Corps of Engineers (USACE)
Marsha Lambert, Denali Borough
David Hite, DNR DMLW, Permits and Easements
Ashley List, DNR Division of Forestry (DOF)
DNR, State Pipeline Coordinator Section (SPCS)
Audra Brase, Alaska Department of Fish & Game (ADF&G), Division of Habitat
Timothy Pilon, Alaska Department of Environmental Conservation (ADEC), Waste Water
Charley Palmer, ADEC, Drinking Water
DNR, DMLW, Mining Section
DNR, Division of Parks, Office of History and Archeology (OHA)

USACE Comment: The proposed expansion of DOT MS 37-2-143-2 has the potential to impact wetlands. Should the expansion of the material site result in the discharge of fill into waters of the U.S. (including wetlands), a permit from the Corps of Engineers would be required. Methods to avoid and minimize impacts to wetlands should be incorporated into the project plan during the design phase for this project. Impacts to Panguingue Creek should be avoided. A pre-application meeting with the Corps is a good way to discuss alternative designs, phasing, or to ask any questions regarding the permitting process.

DMLW Response: Comment noted.

DOF Comment: The Division of Forestry has no comments on this project.

DMLW Response: Comment noted.

ADF&G Comment: ADF&G has no objection to the expansion and continued use of this material site.

DMLW Response: Comment noted.

SPCS Comment: The DOT application, as originally submitted, overlies the ROW leases for ASAP and AKLNG projects and is not compatible with the pipeline projects.

DMLW Response: DMLW met with SPCS and AGDC to discuss the location of the proposed material site and the ROW leases. DMLW discussed alternatives for the material site location with SPCS and AGDC and came to an understanding of an alternative material site location that would be compatible with the ASAP and AKLNG projects. DMLW discussed the alternative material site location with DOT.

The DMLW received an amended application from DOT and conducted agency review from March 4, 2022, to March 18, 2022. The above agencies were solicited again for comments regarding this proposed material site designation and material sale:

SPCS Comment: The State Pipeline Coordinator's Section (SPCS) reviewed the Department of Transportation & Public Facilities (DOT) updated boundary to expand the designated material site, ADL 419438, DOT MS 37-2-143-2 (Panguingue Creek Pit). The updated boundary does not cross the AS 38.35 pipeline rights-of-way for either ASAP or AKLNG and ensures a 50-foot buffer between the material site and the pipeline construction corridor boundary. At this time, the SPCS has no concerns regarding this project. The SPCS would like to recommend that DOT continue to coordinate with the AS 38.35 pipeline lessee if future activities could affect the AS 38.35 pipeline related activities.

DMLW Response: Comment noted.

No other comments were received.

Survey and Appraisal

A survey for this material site is not required per AS 38.04.045. DMLW may require a survey in the future, should conditions arise that warrant a survey. If a survey is required, the applicant will be responsible for the costs of the survey.

An appraisal is not required to sell materials under AS 38.05.555, and there has been no request from the applicant to perform an appraisal under AS 38.05.555(b)(2). The regional representative sale price for this site is currently $3.00 per cubic yard.

Performance Guaranty

Performance bonds are required at the discretion of the director per 11 AAC 71.095(a). DOT is a state agency, as such the requirement of performance bonding is waived.

Insurance

Consistent with AS 38.05.035(a) to protect the State from liability associated with the use of the site, all buyers from the proposed material site location shall provide and maintain a comprehensive general liability insurance policy with the State of Alaska named as an additional insured party per the terms of the executed material sale contract. The buyer shall secure or purchase at its own expense and maintain in force at all times during the term of any material sale contract issued from the proposed site, liability coverage and limits consistent with what is professionally recommended as adequate to protect the applicant and the State, its officers, agents and employees from the liability exposures of ALL the insured's operations on state land. The insurance requirement may be adjusted periodically.

DOT is an agency of the State of Alaska. The State of Alaska is self-insured, and requirements for additional insurance are hereby waived.

Discussion

DOT recently obtained a material sale contract for 250,000 cy of material for road construction and maintenance from the subject site. The original designated material site has been used by DOT under DNR contract since 1984. The most recent contract, ADL 421772, set to expire on September 20, 2027.

DOT has applied for a site expansion of designated material site ADL 419438 to support continued material expansion requirements. DOT's initial proposed expansion was from approximately 22.5 acres to 41.5 acres. During the agency notice period of DOT's application, DMLW received comments from the State Pipeline Coordinator's Section (SPCS) who noted that the proposed material site expansion overlaps with existing ROW leases for ASAP and AKLNG projects and is incompatible with the projects. DMLW met with SPCS and Alaska Gasline Development Corporation (AGDC) to discuss this project overlap. Two alternatives arose from this conversation; (1) to keep the boundaries of the proposed expansion but include a "No Mine Zone" over the ROW lease location or (2) extend the boundaries of the expansion to the north without expanding east over the ROW leases. DMLW met with DOT to share these alternatives and DOT found that the second alternative, to extend the boundaries of the expansion to the north without expanding east over the ROW leases, was the best option. DOT submitted an amended application with an amended map that reflected the changes in the boundaries of the proposed expansion. (Attachment A). A second agency review was sent with the amended application. The SPCS responded to this agency review stating that, "At this time, the SPCS has no concerns regarding this project." DOT's amended proposed expansion is to expand the designated material site from approximately 22.5 acres to 36 acres.

DMLW's proposed expansion and DOT's continued use of the site are compatible with the existing use of the area. Expansion of this material site serves the best interest of the state and public by facilitating road construction and maintenance, which provides an indirect benefit to the State and local community for public safety. Expansion of this material site also provides a direct benefit to the State through revenue gained by material sales.

Expansion of Material Site Designation

The material site designation is being expanded under disposal of material statutes AS 38.05.550 and AS 38.05.555. This decision will designate the expansion area of ADL 419716 as a material site for the long-term sale and extraction of materials until closed by the DMLW. Contracts for the sale of material may be issued by DMLW either by negotiated, competitive, limited, or public and charitable material sale methods. Contracts issued under AS 38.05.550-565, Material Sales, will be issued at a representative sale price per cubic yard determined by the DNR Commissioner or at fair market value determined by appraisal. Some sales under AS 38.05.565, Sale or Disposal of Materials for Special Purposes, may be without cost. Contracts issued under the authority of AS 38.05.810(a) Public and Charitable may be issued at less than fair market value.

Although DMLW may continuously sell materials without further finding or notice once the site is designated, the DMLW must also ensure that state land and natural resources be available for the maximum use consistent with the public interest. To that end, the DMLW will continue to

carefully review individual sale requests and operation plans once sites have been designated to ensure resource consideration and multiple use issues are appropriately evaluated and mitigated when necessary.

Public Notice

Pursuant to AS 38.05.945, this PD will be advertised for a 30-day public comment period, starting on October 27, 2022. In addition, the Healy post office located near the proposed material site expansion will be requested to post the notice pursuant to AS 38.05.945(b)(3)(C). The notice will also be posted on the State of Alaska Online Public Notice website pursuant to AS 38.05.945(b)(3)(B) located at: https://aws.state.ak.us/OnlinePublicNotices/Default.aspx

In accordance with AS 38.05.946, the Denali Borough is a municipality or a corporation entitled to receive notice under AS 38.05.945(c), and may hold a hearing within 30 days after the receipt of the notice.

The public is invited to comment on this PD. All comments received during the public comment period will be considered in the FFD. A copy of the FFD, along with instructions on filing an appeal, will be sent to all persons who comment on the PD. If public comments result in significant changes to the PD, additional public notice may be given.

To be eligible to appeal, a person affected by the FFD must provide written comments during the public comment period per AS 38.05.035(i).

Written comments about this project must be received in this office no later than 5:00 PM on November 28th, 2022 to be considered.

To submit comments please choose one of the following methods:

Mail: Department of Natural Resources
Division of Mining, Land and Water
Northern Region Office
ATTN: Chelsea Barnett
3700 Airport Way
Fairbanks, Alaska 99709
Email: chelsea.barnett@alaska.gov
Fax: (907) 451-2751

DNR-DMLW complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services or special modifications to comment should contact Alaska Relay at 711 or 800-770-8973 for TTY services.

Questions about this project can be directed to Chelsea Barnett at (907) 451-3012.

Recommendation

Based upon the information provided by the applicant, as well as review of relevant planning documents, statutes, regulations, and case files related to this application, the DNR, DMLW, NRO proposes expanding ADL 419438 by designating an additional 13.5 acres and subsequently issuing contracts subject to the conditions described in this document, operating requirements, and standard contract terms. This decision considers ownership of the site, the need for reasonable access to material sources in the region, agency concerns, and project-specific needs. The use of this material will enhance the development of the state's resources and assist with maintaining infrastructure on the Parks Highway. Operations in the site will be consistent with the mining and reclamation guidelines approved by DNR.

Chelsea Barnett
Natural Resource Specialist

10/27/2022
Date

Decision

I find the proposed action as recommended above may be in the best interest of the state and approve it for public notice.

for Jeanne Pigors
Northern Regional Manager

10/27/2022
Date

Attachments:

Attachment A – Location Map