

**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND & WATER
SOUTHCENTRAL REGIONAL LAND OFFICE**

Regional Manager's Decision

ADL 233913/DOT&PF Project No. Z512210000
Department of Transportation & Public Facilities
Public Easement
Seward Meridian Parkway Reconstruction Phase II:
Palmer-Wasilla Highway to Seldon Road

REQUESTED ACTION

On September 16, 2021, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Southcentral Regional Land Office (SCRO), received an application for three discrete easement parcels from the Department of Transportation & Public Facilities (DOT&PF; the applicant) to authorize upgrades to Seward Meridian Parkway on State-owned, DMLW-managed uplands near Wasilla, Alaska. The purpose of the proposed easement is to authorize the construction, operation, and maintenance of highway improvements. The applicant has requested a public easement for highway purposes as defined by AS 19.59.001(8) for three discrete portions of state land of variable length and width, with a total area of 3.655 acres as depicted on Attachment A.

RECOMMENDED ACTION

SCRO recommends that an easement be created with the following parameters:

- Acreage: 3.655 acres
- Term: Indefinite
- Grantee: Mat-Su Borough (MSB)
- Type of easement: Public Access Easement

SCRO's research and recommendations concerning the creation of this easement and any changes from the applicant's request are discussed 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) 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 2008 Southeast Susitna Area Plan, other classification references described herein, and the casefile for the application serialized by DNR as ADL 233913.

LOCATION INFORMATION

Geographic Location

The applicant has requested that DMLW authorize an easement near Wasilla, AK.

Meridian Township Range Section

The applicant has applied to use State-owned, DMLW-managed uplands within Section 1, Township 17 North, Range 1 West, Seward Meridian; Section 6, Township 17 North, Range 1 East, Seward Meridian; and Section 36, Township 18 North, Range 1 West, Seward Meridian.

Other Land Information

Municipality: MSB

Regional Corporation: Cook Inlet Region Inc.

Federally Recognized Tribe: Knik Tribe

TITLE

The State of Alaska holds title to applicable portions of lands within Section 36 of Township 18 North, Range 1 West, Seward Meridian, Alaska, per Patent Number 1225129 recorded at Palmer Recording District. The associated DNR land acquisition casefile is SCH 43.

The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying Wasilla Lake within Section 6, Township 17 North, Range 1 East, Seward Meridian and Section 1, Township 17 North, Range 1 West, Seward Meridian, on the basis of the Equal Footing Doctrine, the Submerged Lands Act of 1953, and AS 38.04.062 (Identification of State Submerged Lands).

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

Known third-party interests within the proposed project area include:

- ADL 775 – Interagency Land Management Assignment (ILMA) to the Department of Military and Veterans Affairs (DMVA)

PLANNING & CLASSIFICATION

The proposed easement falls within the boundaries of DNR's 2008 Southeast Susitna Area Plan (SSAP), Palmer-Wasilla Region, Unit P-07. The SSAP Resource Allocation Table (RAT) lists the land use designation for Unit P-07 as Public Facilities – Retain (Pr) which converts to a classification of Reserved Use Land. Units classified as Reserved Use Land are retained in state ownership and are reserved for “specific infrastructure to serve state interests” (SSAP, 3-4).

The SSAP notes that Unit P-07 is to be managed consistent with the requirements of the Alcantra Armory site (ADL 775)¹, an ILMA to the DMVA, but notes that the west half of Unit P-07 shall convert to a classification of Settlement should the ILMA ever terminate. DOT&PF has noted that pre-existing utilities associated with the facility will be accommodated in accordance with DOT&PF statute and regulation. A letter of non-objection will be required prior to issuance of an authorization. DOT&PF's application indicates that a letter of non-objection is currently pending.

Because the proposed authorization does not conflict with the management guidelines outlined by the SSAP, SCRO has determined that it is consistent with the overall management intent and goals of the relevant planning documents.

ACCESS

Functional legal access to the state land discussed herein exists via Seward Meridian Parkway, Seldon Road, and Bogard Road.

A portion of the proposed construction crosses a DMVA managed ILMA. The applicant will need to obtain a letter of non-objection from the DMVA to authorize access, construction and maintenance relating to the highway improvement project.

PUBLIC NOTICE & AGENCY REVIEW

Public Notice Summary

Public notice of the application was conducted from February 2, 2022, to March 7, 2022. The notice was posted to the State of Alaska Online Public Notice System and was sent to the Wasilla, Brentwood, and Wasilla Carrier Annex post offices for display on their notice boards. The notice was also sent to the following recipients:

- Cook Inlet Region, Inc.
- Knik Tribal Council
- Knikatu, Inc.
- City of Wasilla
- Teeland Middle School
- Mat-Su Career and Technical High School
- Notice was provided to three adjacent landowners as identified through the Mat-Su Borough Parcel Viewer on January 25, 2022.

Public Notice Comment & Response

No comments were received during the public notice period.

¹ Noted in error as ADL 64415 in the SSAP RAT.

Agency Review Summary

Agency review of the application was conducted from February 2, 2022, to March 7, 2022. The notice was sent to the following recipients:

State Agencies

- DNR-DMLW; Survey Section, Land Conveyance Section, Realty Services Section, Water Section, and Mining Section.
- DNR; Division of Parks and Outdoor Recreation (DPOR)-Permitting and the Office of History & Archeology (OHA)
- DNR; Division of Oil and Gas-State Pipeline Coordinator's Section
- DNR; Division of Forestry-Mat-Su Office
- DNR; Mental Health Trust Land Office
- DNR; Information Resource Management
- Alaska Department of Environmental Conservation (DEC); Division of Water-Alaska Pollutant Discharge Elimination System Program,
- DEC; Environmental Health – Drinking Water Program, Solid Waste Program, and
- DEC; Division of Spill Prevention, Contaminated Sites.
- Alaska Department of Fish & Game (ADF&G); Habitat, and Access Defense
- DOT&PF; Statewide Right of Way
- Alaska Department of Commerce, Community and Economic Development; Division of Community and Regional Affairs
- DMVA
- Palmer Soil and Water Conservation District

Federal Agencies

- U.S. Army Corps of Engineers

Local Agencies

- City of Wasilla; Planning Department

Agency Review Comment & Response

A total of two (2) comments were received during the agency review and are summarized below:

Comment: On March 1, 2022, OHA commented that cultural resources near the Cottonwood creek crosses have been identified by the Chickaloon Village Tribal Council; a cultural resources survey has been initiated with the OHA and the U.S. Army Corps of Engineers. Should inadvertent discoveries of cultural resources occur during the duration of the projects, OHA should be notified so that OHA may evaluate whether the resources should be preserved in the public interest (as specified at Section 41.35.070[d]). Any information provided helps the State better manage Alaska's heritage resources. Examples of cultural resource sites that could be encountered include: historical cabin remains (collapsed, standing, or foundations); adits; dredges or other mining equipment; cultural depressions or pits; graves or cemeteries; prehistoric tools or artifacts; and paleontological (fossilized) remains.

Response: SCRO acknowledged the comment and provided the applicant with OHA's recommendations.

Comment: On March 7, 2022, the DEC - Environmental Health - Drinking Water Program commented that the proposed easement is near active registered public water systems. DEC asks the applicant to adhere to Recommendations for general project activities associated with, or near, a public water system source.

Response: SCRO acknowledged the comment and provided the applicant with DEC's recommendations.

No other comments were received.

ENVIRONMENTAL CONSIDERATIONS

SCRO evaluates environmental factors directly related to the authorized 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. SCRO recommends 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. SCRO further recommends that no fuel or other hazardous materials are authorized to be stored on site. DOT&PF will assume the majority of DMLW's land administration responsibilities within the boundaries of any easement granted under this application, including management of environmental contamination.

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, SCRO 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 facilitate expansion of the local transportation system which will promote conditions for economic development and provide an indirect benefit to the state. In consideration of these factors, and because there are no competing requests for authorization, SCRO advises that approval of this easement will provide the greatest economic benefit to the State.

DISCUSSION

The requested easement will complement the existing right-of-way for the Seward Meridian Parkway, and Bogard Road, as well as newly acquired interest from other landowners to provide sufficient width to enable safe construction and operation of the Seward Meridian Parkway extension. As such, the easement would be issued in perpetuity or until no longer needed. The

easement will consist of three parcels of varying sizes and shapes as shown on Attachment A, and will be issued as a Public Access Easement for highway purposes. Easements created by DMLW are non-exclusive unless described otherwise.

SCRO recommends that a final easement will be issued to the MSB pursuant to the Memorandum of Agreement between DOT&PF and MSB, signed on June 29, 2018.

PERFORMANCE GUARANTY

A performance guaranty is intended to incentivize compliance with the terms and conditions of the 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, 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, SCRO recommends that a performance guaranty not be required at this time. DMLW reserves the right to require a performance guaranty during the terms of the easement.

INSURANCE

SCRO recommends that insurance not be required as the applicant is self-insured. SCRO recommends that the applicant be required to provide proof of its contractor's insurance upon DMLW's request.

SURVEY

DOT&PF has provided DMLW with a series of parcel maps depicting the requested parcels. Because this authorization is for minor modification to existing ROW and DOT&PF is working with adjacent landowners, these parcel maps will be sufficient for easement issuance.

FEES

Per 11 AAC 05.020(b), SCRO recommends that fees for this authorization are waived as the request is in the public interest. SCRO further recommends that the easement document be sent to the Recorder "State Business - No Charge" as the applicant is a state agency.

RECOMMENDATION

Based upon the information provided by the applicant, as well as review of relevant planning documents, statutes, and regulations related to this application, SCRO recommends the issuance of an easement as described above, on the condition that all stipulations are followed as described in the attached authorization.



Megan Byers, Natural Resource Specialist 2
DMLW Southcentral Regional Land Office

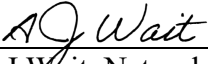
February 24, 2023

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 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

2/27/23

Date

ATTACHMENTS

- Survey Imagery from DOT&PF (Attachment A)
- Draft easement document

APPEAL

An eligible person affected by this decision, and who provided timely written comment or public hearing testimony to the department, may appeal the decision to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any appeal must be received within twenty (20) calendar days after issuance of this decision under 11 AAC 02.040. An eligible person must first appeal a decision to the Commissioner before seeking relief in superior court. The Alaska Court System establishes its own rules for timely appealing final administrative orders and decisions of the department.

Appeals may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. Appeals 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)-(b). A copy of 11 AAC 02 is available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.