



**STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER**

Southeast Regional Land Office

Regional Manager's Decision

ADL 109282

City and Borough of Sitka

Application for Easement

AS 38.05.850

Executive Summary

On September 16, 2022, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW) received an easement application from the City and Borough of Sitka (CBS) for a proposed underground utility power line on State-owned, DMLW-managed land in Sitka, Alaska. The 12.5 kV underground power line will provide electric utility power to support Mt. Edgumbe Medical Center's planned expansion and enhance redundant power capacity to better serve other large utility power consumers on Japonski Island. The State of Alaska intends to authorize this easement. A diagram of the proposed easement is included as Attachment 1.

Proposed Action

DMLW will issue an entry authorization (EA) for a term of two (2) years to allow for construction and completion of a DMLW-approved survey, which is a prerequisite for issuance of the final easement. The applicant proposes to build a 12.5 kV underground power line on state-owned submerged lands beneath Sitka Channel connecting the CBS Marine Street substation near the Sitka Harbor Master property to State of Alaska Department of Education land on Japonski Island. The applicant will utilize horizontal directional drilling to place three subsurface HDPE pipes in Sitka Channel. One 6-inch conduit will house three insulated copper utility cables and a second 6-inch conduit will be placed as a spare. One 4-inch conduit will house communications cabling. The proposed easement is 30 feet wide, approximately 725 feet in length, 0.49 acres, more or less. The term of the EA shall be inclusive of the total easement term of 25 years. A draft EA is included as Attachment 2. A draft Public Utility easement is included as Attachment 3.

Statutory Authority

This easement application is being adjudicated pursuant to AS 38.05.850, 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 2002 Northern Southeast Area Plan (NSAP) and other classification references described herein, and the casefile for the application serialized by DNR as ADL 109282.

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.

Location Information

Geographic Location: A parcel of State submerged lands in Sitka, Alaska located in Sitka Channel extending southwest from Thomsen Harbor to Japonski Island.

Property Description: DMLW managed submerged land located in Section 35, Township 55 South, Range 63 East, Copper River Meridian, Alaska.

Width: 30 ft Length: 725 ft

Approximate Acreage: 0.49

Other Land Information

Municipality: City and Borough of Sitka

Regional Corporation: Sealaska Corporation

Village Corporation: Shee Atika, Incorporated

Federally Recognized Tribe: Sitka Tribe of Alaska

Title

The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying Sitka Channel in the section(s) referenced above, on the basis of the Equal Footing Doctrine, and the Submerged Lands Act of 1953.

Planning and Classification

The proposed easement site is subject to the Northern Southeast Area Plan (NSAP 2002) and located within Management Unit BT-132. The designated land use for Unit BT-132 is Pr (Public Facilities-Retain), excepting an area of Whiting Harbor designated as Habitat (Ha) on the west side of Japonski Island. The Pr designation converts to Reserved Use Land as the land classification. The NSAP states, “a land-use designation recognizes uses or resources that are of major importance in a particular management unit (NSAP 2002, 3-1).” Designation Pr identifies, “sites [that] are reserved for a specific infrastructure to serve state interests. These units are classified Reserve Use Land and are not selectable by municipalities under state law (except under AS 38.05.810). Units designated ‘Public Facilities-Retain’ will be retained in state ownership.... (NSAP 2002, 3-3).”

BT-132 Management Intent:

– Ensure continued operation of Sitka Airport, U.S. Coast Guard, and related public facilities. Development authorizations should ensure this consideration is met (NSAP 2002, 3-275).

Under 11 AAC 55.170, land classified as Reserved Use Land is managed for three primary uses: 1) reservation for transfer to other government or non-government agencies performing a public service 2) reservation for land exchange transfers 3) designation for public facility use (NSAP 2002, 4-2)

The proposed use is consistent with NSAP land classification, management guidelines, and intent

Third Party Information

None.

Background

On September 16, 2022, DMLW received an easement application from the City and Borough of Sitka (CBS) for a proposed subsurface utility line on state-owned land in Sitka Channel, ADL 109282. The utility line will supply additional power capacity to Japonski Island to meet increased demand from the planned expansion of Mount Edgecumbe Medical Center. Only a portion of the proposed project occurs on DMLW-managed land. The entry and exit points for the proposed utility line are located on CBS-owned Harbor Master property, fronting Sitka Channel, and Alaska Department of Education (DEED) land on Japonski Island. In addition to the proposed DNR-DMLW authorization, the applicant is seeking authorizations from Alaska Department of Education and Early Development (DEED), Alaska Department of Transportation & Public Facilities (DOT&PF), and the U.S. Army Corps of Engineers (USACE).

Prior to issuance of the Entry Authorization, DMLW will require written non-objection from DEED and DOT&PF regarding the proposed project.

The applicant is also required to obtain a Special Purposes Material Sale permit authorization from DMLW for the removal of material from state-owned land.

Public Notice & Agency Review

Agency Review Summary

An Agency Review was conducted March 6, 2023 to April 5, 2023. The following organizations were included in this review: Alaska Department of Fish and Game (ADF&G), Alaska Department of Environmental Conservation (DEC), Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation, Office of History and Archaeology (DNR Parks OHA), Alaska Department of Natural Resources, Division of Mining, Land, and Water, Statewide Abatement of Impaired Lands Section (DNR-DMLW SAIL), and the Department of Transportation & Public Facilities (DOT&PF).

Agency Review Comment and Response

ADF&G

Summary: ADF&G has no objections to the issuance of this easement however we have the following comment:

The project area is within important habitat used by multiple marine mammal species, some of which are listed as endangered under the Endangered Species Act, and includes Biologically Important Areas¹ for gray whale feeding (May-November) and humpback whale feeding (March-May). If possible, avoid construction activity which may disrupt foraging activity during these high-use periods. To minimize disturbances, it is important to follow any advisories or mitigation measures provided by the National Marine Fisheries Service (NMFS; all Alaska marine mammal species except sea otters) or the US Fish and Wildlife Service (FWS; sea otters). For inquiries regarding the NMFS consultation process email AKR.PRD.Section7@noaa.gov. For questions related to the

FWS Alaska Marine Mammals Management Office call 800-362-5148. Noting, polar bears and walrus are also managed by FWS but do not occur in the project area.
<http://cetsound.noaa.gov/important>

DMLW Response: Thank you for submitting comment from ADFG re: ADL 109282. The comment will be provided to the applicant and included in the decision document.

Public Notice Summary

Notice of this application was posted on the Alaska Online Public Notice System website and sent to the following known interested parties: U.S. Army Corps of Engineers (USACE), National Oceanic and Atmospheric Administration (NOAA), National Forest Service (USDA-NFS), U.S. Fish and Wildlife Service (USFWS), Sealaska Corporation, Southeast Alaska Conservation Council, Alaska Association of Conservation Districts, Central Council of the Tlingit and Haida Indian Tribes of Alaska (CCTHITA), Sitka Tribe of Alaska, Shee Atika, Inc., City and Borough of Sitka (CBS).

Public Notice Comment and Response

Charles Clement, President & CEO, SouthEast Alaska Regional Health Consortium (SEARHC)

Summary: SEARHC is in support of the request and intends to work with DNR and CBS to ensure this project is completed efficiently and with as little disruption to the public and environment as possible. SEARHC is a non-profit organization dedicated to serving the health needs of the regional public and is committed to the Mt. Edgecumbe Medical Center Expansion Construction Project, constructing a state-of-the-art medical facility with the latest technology, expanding medical services, and creating temporary construction and permanent health care jobs.

DMLW Response: Thank you for providing comment on ADL 109282. It will be included in the decision document.

Access

Physical and Legal Access: The applicant may access the site over state tide and submerged lands underlying Sitka Channel, a navigable water body. The applicant will access the site indirectly, through horizontal drilling, via state-owned lands. Drilling entry/exit points are located on CBS-owned Harbor Master property, near the Marine Street substation, and on DEED-owned land, near Seward Avenue, on Japonski Island.

Access to and along Public Waters: Sitka Channel is a navigable, public water body. Pursuant to AS 38.05.126(a), the public has a constitutional right to free access to, and use of, navigable or public waters of the State of Alaska. Public access across this easement shall not be restricted in any manner.

Environmental Considerations

DMLW considers the environmental factors directly related to authorizing the use of State lands as part of its determination of whether approving 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 to approve the authorization. The applicant is responsible for determining site suitability.

There are no significant environmental risks associated with the proposed easement. The utility line installation poses limited environmental considerations. These have been identified by the applicant and are associated with drill pipe/borehole malfunctions, inadvertent drilling fluid and/or drilling mud discharge, or strike of an existing utility line (ADL 105170). Attachments E, F, G in applicant's project description detail plans to minimize and mitigate risks associated with the above. These include, but are not limited to

- Continuous monitoring of drill fluid circulation pressure and downhole annular pressure
- Continuous bore path monitoring for minimum divergence from projected drill path
- Pump and vacuum systems for removal of inadvertent drilling mud/fluid discharge
- Strike alarm system for potential line strike alerts
- Procedures to address and correct drill pipe malfunctions, inadvertent discharges, borehole collapse, and line strikes

The final DMLW easement authorization includes stipulations addressing the handling, spillage, and cleanup of hazardous substances on state-owned land.

Economic Benefit and Development of State Resources

In accordance with AS 38.05.850, DMLW considers three criteria to determine if this project provides the greatest economic benefit to the State and the development of its natural resources: direct economic benefit to the State, indirect economic benefit to the State, and encouraging development of the State's resources.

The proposed easement will provide additional utility service capacity to Japonski Island as required by a planned medical facility expansion. The development will likely generate beneficial impacts at municipal, regional, and state scales. The additional utility capacity will also enhance service to existing large institutional power consumers on Japonski Island. DMLW finds the proposed easement is directly consistent with AS 38.05.850, 11 AAC 55.170, and NSAP management intent and land use classification.

Performance Guaranty

Performance guarantees are means to assure performance and to provide ways to pay for corrective action if the permittee fails to comply with the requirements set forth in the permit document. They are also used to protect state land from damage and to make certain that improvements are removed and that the land is returned in a usable condition upon termination of the permit.

Performance Guaranty Requirement: The requirements of a performance guaranty for ADL 109282 are met by the self-insurance of the applicant, as a political subdivision of the State. DMLW reserves the right to request a performance guaranty during the term of this authorization.

Insurance

In accordance with 11 AAC 96.065, the requirements for insurance are met by the self-insurance of the applicant, as a political subdivision of the State. DMLW reserves the right to request insurance during the term of this authorization. In connection with the entry on or use of lands, subject to the limitations and provisions of AS 09.50.250-.270 and AS 37.05.170, CBS shall ensure that its contractors and subcontractors shall indemnify, save harmless, and defend the State, its agents and its employees from any and all claims or actions for injuries or damages sustained by any person or property arising directly or indirectly from the construction or the contractor's performance of the contract, except when the proximate cause of the injury or damage is the State's sole negligence.

Survey

A DMLW-approved survey is required to determine the proper location and acreage of installed improvements and the associated easement on State-owned, DMLW-managed lands. The area shown on Attachment 1 is the basis for the survey. The applicant must acquire survey instructions and coordinate with the DMLW Survey Section during the survey process. A survey instruction fee may be applicable. A draft must be submitted to the Survey Section prior to the expiration of the EA and a final survey must be approved by DMLW before issuance of the final easement.

Fees

Entry Authorization: In accordance with 11 AAC 05.070(d)(2)(I), the fee for an Entry Authorization for an approved easement or right-of-way for site development is \$240.00. The annual fee for this Entry Authorization will be \$240.00.

Easement: In accordance with 11 AAC 05.070(d)(2)(C), the one-time fee for a Public Utility easement of \$0.56 cents per linear foot at 725 linear feet is \$406.00.

The one-time easement fee required prior to the issuance of the entry authorization is \$646.00

Survey: Fees for survey instruction, review, and recording will be required and administered through the DMLW Survey Section.

Recording: The applicant shall pay the appropriate recording fees as determined based on current regulation to have the easement document recorded by DMLW. Recording fees shall be paid prior to the execution of the easement document.

Entry Authorization

The entry authorization is an interim authorization issued when a survey is necessary prior to easement issuance. Staff recommend that an entry authorization be issued for a term ending in 2 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 a

Public Utility easement. The entry authorization may be revoked if the applicant has not supplied DMLW with a draft survey within 1 years of receiving survey instructions. An extension of the entry authorization may be granted at the written request of the applicant if granting the extension is deemed appropriate by DMLW and may be subject to applicable fees. If an extension is required, the applicant must contact DMLW no later than 30 days prior to the expiration of the entry authorization and certify there have been no changes to the approved development plan. Staff recommend that entry authorization not be granted until the following deliverables have been provided to DMLW, as described or recommended above:

Easement Term

The authorization requested under ADL 109282 will be issued for a term of 25 years from the effective date of this decision.

Term Discussion

Easements issued under AS 38.05.850 may be revoked for cause if the area described is no longer used for the purpose intended or if a higher and better use of the land is established as determined by DMLW. Following termination an easement, whether by abandonment, revocation, or other means, a grantee shall restore the site to a condition that is acceptable to DMLW. A grantee’s planned site restoration activities, including either removal or abandonment of installed improvements, must be described in writing and present to DMLW prior to termination of the easement. DMLW may require compliance with additional conditions specific to the site restoration effort that were not required for the construction, maintenance, or operation of described improvements. Should a grantee or refuse to perform approved site-restoration activities within the time allotted by DMLW, the improvements may become property of DNR. However, a grantee shall not be relieved of the cost of restoring the area to a condition that is acceptable to DMLW.

Recommendation

In consideration of all events and criteria described above, it is my determination that this project is consistent with the overall classification and management intent for this land and would be a benefit to the State of Alaska. Therefore, I recommend issuance of a Public Utility easement to the City and Borough of Sitka pursuant to AS 38.05.850, upon satisfactory completion of the project in conformance with all the terms and conditions of this decision and the entry authorization. The easement will be issued for a term of 25 years from the effective date of this decision that may be terminated if a higher and better economic use for the project area is established as determined by DMLW Director, if the land is no longer used for the above stated purpose, or is revoked for cause.

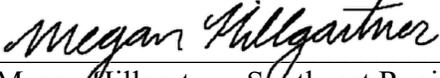
Mason Auger, NRS 2
Name, Title

4/28/2023
Date

Regional Manager’s Decision

When adjudicating an easement authorization pursuant to AS 38.05.850, DNR seeks to responsibly develop Alaska’s resources by making them available for maximum use and benefit

consistent with the public interest. In consideration of all events and criteria listed above, DMLW has determined that the authorizations to be granted under ADL 109282 are consistent with DNR's mission. It is my decision that this project is consistent with the overall classification and management intent for this land. DMLW will issue a Public Utility easement, pursuant to AS 38.05.850, once the applicant has conformed to all terms and conditions of this decision and the EA.


Megan Hillgartner, Southeast Regional Manager

4/28/2023

Date

Attachments:

Attachment 1. Development Diagram

Attachment 2. Draft Entry Authorization

Attachment 3. Draft Easement

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 State Courts establish 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)(6), which has been set at \$200 under the provisions of 11 AAC 05.160 (a)-(b). A .pdf or print copy of 11 AAC 02 may be obtained by contacting Erik Fossum via phone at (907) 269-8429, via email at erik.fossum@alaska.gov, and is also available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.