

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

Regional Manager's Decision

ADL 234005

Nushagak Electric and Telephone Cooperative, Inc.
Public Utility Easement

REQUESTED ACTION

On March 21, 2022, the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Regional Land Office (SCRO) received an application for a lease from Matthew Furrer at TempTel, LLC on behalf of the Nushagak Electric and Telephone Cooperative, Inc (Nushagak; the applicant) to authorize construction, operation, and maintenance of a fiber optic broadband system consisting of a below-grade fiber optic telecommunication cable and buried manholes at 20,000 foot intervals on State-owned, DMLW-managed land near Dillingham, Aleknagik, Ekwok, and Levelock, Alaska. On May 23, 2022, SCRO determined that the request was more consistent with an easement property interest. On October 28, 2022, SCRO received an easement application from the applicant for the proposed project to satisfy the land development requirements necessary for the applicant's plan. The purpose of the proposed easement is to provide internet and telecommunication services to the region.

The applicant requested a private non-exclusive easement approximately 53 miles (279,840 feet) long, 30 feet wide, 192 acres in size, and for a term of 100 years.

RECOMMENDED ACTION

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

Segment 1 (Western Segment – Aleknagik to Ekwok)

- Width: 30 feet
- Length: 28.5 miles (150,480) feet
- Acreage: 103 acres
- Term: Change from 100 years to indefinite
- Grantee: Nushagak Electric and Telephone Cooperative, Inc
- Type of easement: Change from Private Non-Exclusive to Public Utility Easement

Segment 2 (Eastern Segment – Ekwok to Levelock)

- Width: 30 feet
- Length: 24.5 miles (129,360) feet
- Acreage: 89 acres
- Term: Change from 100 years to indefinite
- Grantee: Nushagak Electric and Telephone Cooperative, Inc
- Type of easement: Change from Private Non-Exclusive to Public Utility 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 2013 Bristol Bay Area Plan, other classification references described herein, and the casefile for the application serialized by DNR as ADL 234005.

LOCATION INFORMATION

Geographic Location

The applicant has requested that DMLW authorize an easement near Aleknagik, Ekwok, and Levelock, Alaska.

Meridian Township Range Section

The applicant has applied to use State-owned, DMLW-managed shorelands and uplands within:

- Township 009 South, Range 049 West, Seward Meridian
 - Sections 35 and 36
- Township 010 South, Range 048 West, Seward Meridian
 - Sections 6, 8, 17, 20, 21, 27, 28, 34, 35, and 36
- Township 010 South, Range 049 West, Seward Meridian
 - Sections 2 and 7
- Township 010 South, Range 050 West, Seward Meridian
 - Sections 14, 15, 19, 20, 21, 22, and 30
- Township 010 South, Range 051 West, Seward Meridian
 - Sections 21, 22, 23, 24, 25, 28, 29, and 30
- Township 010 South, Range 052 West, Seward Meridian
 - Sections 25, 26, 27, 28, 31, 32, and 33
- Township 010 South, Range 053 West, Seward Meridian
 - Sections 25, 26, 27, 28, 29, 30, 34, 35, and 36
- Township 010 South, Range 054 West, Seward Meridian
 - Sections 25, 32, 33, 34, 35, and 36
- Township 011 South, Range 047 West, Seward Meridian

- Sections 7, 18, 19, 28, 29, 30, and 33
- Township 011 South, Range 048 West, Seward Meridian
 - Sections 1 and 12
- Township 012 South, Range 046 West, Seward Meridian
 - Sections 1, 2, 3, 4, 5, and 6
- Township 012 South, Range 047 West, Seward Meridian
 - Sections 1, 2, 3, and 4

Other Land Information

Municipality: City of Ekwok, City of Aleknagik, and the Lake and Peninsula Borough

Regional Corporation: Bristol Bay Native Corporation.

Federally Recognized Tribes: Levelock Village, Native Village of Ekwok, and Native Village of Aleknagik.

Refer to Attachment A for an image depicting the proposed project area.

TITLE

The State of Alaska holds title to the lands underlying portions of ADL 234005; specifically:

- Applicable portions of Township 10 South, Range 48 West, Seward Meridian, per US Patent 50-90-0312. The associated DNR selection casefile is GS 3156.
- Applicable portions of Township 10 South, Range 50 West, Seward Meridian, per US Patent 50-89-0031. The associated DNR selection casefile is GS 3157.
- Applicable portions of Township 10 South, Range 51 West, Seward Meridian, per US Patent 50-89-0025. The associated DNR selection casefile is GS 3158.
- Applicable portions of Township 10 South, Range 52 West, Seward Meridian, per Tentative Approval 1982-0214 The associated DNR selection casefile is GS 3159.
- Applicable portions of Township 10 South, Range 53 West, Seward Meridian, per Tentative Approval 1988-0049. The associated DNR selection casefile is GS 3160.
- Applicable portions of Township 10 South, Range 54 West, Seward Meridian, per US Patent 50-2020-0087. The associated DNR selection casefile is GS 3161.
- Applicable portions of Township 11 South, Range 47 West, Seward Meridian, per Tentative Approval 2008-0107 The associated DNR selection casefile is GS 6079.
- Applicable portions of Township 11 South, Range 48 West, Seward Meridian, per US Patent 50-89-0031. The associated DNR selection casefile is GS 3168.
- Applicable portions of Township 12 South, Range 46 West, Seward Meridian, per US Patent 50-2006-0013. The associated DNR selection casefile is GS 6472.
- Applicable portions of Township 12 South, Range 47 West, Seward Meridian, per Tentative Approval 2006-0007. The associated DNR selection casefile is GS 6080.

The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying the sections referenced above, 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

There are no third-party interests within the boundaries of the proposed easement.

PLANNING & CLASSIFICATION

The requested easement is located within state-owned shorelands and uplands within the boundaries of the 2013 Bristol Bay Area Plan (BBAP), Region 6 Nushagak, Mulchatna - subunits 6-35A, 6-42, 6-42A, 6-48, and 6-49, and Region 10 - Western Iliamna Lake, Kvichak River – subunit 10-6.

Subunit 6-35A is designated as Wr – Water Resources, Ha – Habitat, and Rd - Public Recreation and Tourism Dispersed, which converts to a classification of Water Resources Land, Wildlife Habitat Land, and Public Recreation Land, respectively (BBAP 4-7). The management intent for subunit 6-35A is to protect and maintain wetlands and wetland hydraulic connections to adjacent streams and wetlands, and to protect moose and caribou prime habitat (BBAP 3-110). Development for utilities is considered appropriate in this unit; however, authorizations for development must avoid impacts or mitigate impacts to wetlands, riverine areas, and moose/caribou habitat.

Subunit 6-42 is designated as Ha – Habitat and Rd – Public Recreation and Tourism Dispersed, which converts to a classification of Wildlife Habitat Land and Public Recreation Land, respectively (BBAP 4-7). The management intent for subunit 6-42 emphasizes habitat and dispersed recreation values, however, it does state that development for utilities, communication, and other facilities providing a public service may be appropriate. Authorizations for development must avoid impacts, or mitigate impacts to wetlands, riverine areas, and sensitive moose and caribou wintering areas and caribou calving habitat.

Subunit 6-42A is designated as Gu – General Use. Management intent for subunit 6-42A is for various uses, including but not limited to protection of fish and wildlife resources and their associated habitats, dispersed recreation, and development. Development authorizations may be appropriate, but are subject to the protection of fish and wildlife resources and their associated habitats. Portions of the western part of subunit 6-42A include moose calving and over wintering areas (primarily in S010S048W and S010S049W). The BBAP states: “uses that are likely to produce levels of acoustical or visual disturbance sufficient to disturb calving, rutting, or post-calving aggregations that cannot be seasonally restricted should not be authorized in these areas” (2-14).

Subunit 6-48 is designated as Ha – Habitat and Rd – Public Recreation and Tourism Dispersed, which converts to a classification of Wildlife Habitat Land and Public Recreation Land, respectively (BBAP 4-7). The Iowithla River is designated as an anadromous fish stream and is used by brown bear during the spawning season; brown bear also den in this area (BBAP (3-112). Additionally, this subunit includes calving and wintering area for moose, caribou calving habitat, areas containing waterfowl molting concentrations, and is used for subsistence and recreational

fishing and hunting (BBAP 3-112). The management intent for subunit 6-48 is to protect fish and wildlife habitat and recreation resources, but development authorizations may be considered appropriate subject to the protection of fish and wildlife habitat and recreation resources (BBAP 3-112).

Subunit 6-49 is designated as Ha – Habitat and Rd – Public Recreation and Tourism Dispersed, which converts to a classification of Wildlife Habitat Land and Public Recreation Land, respectively (BBAP 4-7). This subunit also includes navigable portions of the Iowithla River. The management intent for subunit 6-49 is to maintain its fish and wildlife resources and public recreation values, as well as the recreational uses of the Iowithla River and the adjoining upland corridor (BBAP 3-113). The development of recreational or public uses sites in subunit 6-49 are subject to specific requirements in the Nushagak & Mulchatna Rivers Recreation Management Plan (RRMP). The RRMP's management intent for Unit 2 – Iowithla River is Primitive Use Experience, which is defined as: “a use experience characterized by little to no evidence of human use (little to no manmade changes to the environment from development or other human activities)” (RRMP 2-1). Further, the RRMP's management guidelines related to recreation uses and structures may allow long term use (longer than 14 consecutive days at one site) for “other uses” on a case-by-case basis (RRMP 3-9). The applicant indicates in their development plan that there will be no permanent buildings constructed within the proposed project. SCRO asserts that the fiber optic cable is considered an “other use” since the risk is low for effecting recreational uses within the unit.

Subunit 10-6 is classified as Gu – General Use. Management intent for subunit 10-6 is for various uses, including but not limited to protection of fish and wildlife resources and their associated habitats, dispersed recreation and tourism, wetland complexes, and development. Intensive development is not intended within this unit, unless related to mineral development. The Bristol Bay transportation corridor transects the subunit; no authorizations or disposals are to be considered that are within or near the transportation corridor without consultation with DOT&PF. DOT was included in Agency Review and reported they are working with the applicant.

The proposed easement will also cross Lower Klutuk Creek, Klutuk Creek, the Nushagak River, the Kokwok River, and the Muklung River in locations that fall outside of any subunit identified by the BBAP. Pursuant to Table 3.1 (BBAP 3-300), these navigable waterbodies are designated as Ha – Habitat and RD – Public Recreation and Tourism Dispersed, which converts to a classification of Wildlife Habitat Land and Public Recreation Land, respectively (BBAP 4-7). Additionally, these waterbodies are catalogued as anadromous streams.

The goals outlined in the BBAP for Wildlife Habitat Areas (BBAP 2-9) are to ensure access to public lands and waters, mitigate habitat loss, to contribute to economic diversity, and to maintain and protect publicly owned habitat base. The easement as proposed does not conflict with the goals as outlined in this chapter. Additionally, the applicant has indicated that they are currently coordinating with ADF&G for the required Fish and Habitat permits and will need to continue to coordinate with ADF&G as well as local communities to create and submit a wildlife mitigation plan for approval by this office, as discussed in the *Discussion* portion of this decision.

The goal outlined in the BBAP for Recreation Resources (BBAP 2-50) is to provide for accessible outdoor recreational opportunities, which will not be impacted by this easement as proposed.

The proposed easement is to facilitate the laying of new fiber optic lines and is considered a telecommunication utility. Because the proposed authorization does not conflict with management guidelines outlined by the Plan, SCRO has determined that it is consistent with the overall management intent and goals of the Plan.

ACCESS

Construction of the development described herein is contingent on the placement of related infrastructure on adjacent uplands owned and/or managed by Bristol Bay Native Corporation, Ekwok Natives Limited, and Aleknagik Natives Limited. The applicant will be required to obtain authorization from Bristol Bay Native Corporation, Ekwok Natives Limited, and Aleknagik Natives Limited to construct, operate, and maintain the fiber optic cable and proposed development.

Additionally, Segment 1 of the proposed development is to be accessed via various DOT&PF managed rights-of-way from Aleknagik. The applicant will be required to obtain authorization from DOT&PF for activities within the right-of-way prior to issuance of an entry authorization by DMLW.

The authorization proposed herein will not impair public access; therefore, an easement pursuant to AS 38.05.127 is not necessary to ensure free access to and along any public or navigable waters. DMLW reserves the right to create an easement pursuant to AS 38.05.127 over the authorization proposed herein.

PUBLIC NOTICE & AGENCY REVIEW

Public Notice Summary

Public notice of the application was conducted from May 22, 2023, to June 22, 2023. The notice was posted to the State of Alaska Online Public Notice System and was sent to the Aleknagik Post Office, Ekwok Post Office, Levelock Post Office for display on their notice boards. The public notice was also sent to the Southwest Region School District, Levelock School, William "Sonny" Nelson School, and the Aleknagik City Office.

Public Notice Comment & Response

No comments were received during the public notice period.

Agency Review Summary

Agency review of the application was conducted from May 22, 2023, to June 22, 2023. The notice was sent to the following recipients:

State Agencies

- DNR-DMLW – Surveys Section, Land Conveyances Section (LCS), Realty Services Section, Water Section, Mining Section, Statewide Abatement of Impaired Lands, and Public Access Assertion & Defense.

- DNR – Division of Parks and Outdoor Recreation (DPOR), Permitting Section, and Office of History and Archaeology (OHA)
- DNR – Division of Oil and Gas, State Pipeline Coordinator Services
- DNR – Division of Forestry – Matsu/Southwest Office
- DNR – Alaska Mental Health Trust Land Office
- DNR – Spatial Case Information Management System
- Alaska Department of Environmental Conservation (DEC) – Division of Water (DOW), Alaska Pollutant Discharge Elimination System Program, Engineering Supporting and Plan Review
- DEC – Environmental Health, Drinking Water Program and Solid Waste Program
- DEC – Spill Prevention, Contaminated Sites
- Department of Fish and Game (ADF&G) – Habitat, Southcentral
- ADF&G – Wildlife Conservation, Access Defense
- ADF&G – Sport Fish, Bristol Bay
- Department of Transportation and Public Facilities (DOT&PF) – Statewide Right of Way
- Alaska Department of Commerce, Community and Economic Development- Division of Community and Regional Affairs
- Wasilla Soil and Water Conservation District

Federal Agencies

- U.S. Department of the Interior, Indian Affairs
- U.S. Geological Service
- U.S. Bureau of Land Management
- U.S. Fish and Wildlife Service
- U.S. Army Corps of Engineers (USACE)

Local Entities

- Bristol Bay Native Corporation
- Bristol Bay Native Association, Inc.
- Ekwok Natives Limited
- Ekwok Village Council
- Levelock Natives Limited
- Levelock Village Council
- Aleknagik Natives Limited
- Aleknagik Traditional Council
- City of Ekwok
- City of Aleknagik

A total of six (6) comments were received during the agency review and are summarized below:

Comment: On May 22, 2023, SCRO received a comment from DMLW, LCS stating no objection to the proposed easement.

Response: SCRO acknowledged the comment.

Comment: On May 23, 2023, SCRO received a comment from DPOR, Permitting Section stating that the applicant has obtained a permit from DPOR for the proposed development within Wood-Tikchik State Park.

Response: SCRO acknowledged the comment.

Comment: On May 24, 2023, SCRO received a comment from USACE, Regulatory Program, stating that the proposed project appears to fill in wetlands and requires a USACE permit.

Response: SCRO acknowledged the comment and forwarded it to the applicant.

Comment: On May 31, 2023, SCRO received a comment from USACE, Alaska District Regulatory Division, Kenai Field Office, stating that the approval from USACE is required prior to any work in, over or under navigable waters of the United States, or which affects the course, location, condition, or capacity of such waters, in addition to the discharge of fill material into waters of the U.S., including wetlands. A permit is required from USACE.

Response: SCRO acknowledged the comment and forwarded it to the applicant.

Comment: On June 20, 2023, SCRO received a comment from DOT&PF stating that DOT&PF has issued five permits to Nushagak in the general vicinity; however, a permit for a portion of Aleknagik Lake Road is required (around Mile Post 4). The following permits have been issued by DOT&PF to Nushagak in 2022: 1-050060-22-043: Kanakanak Road (issued August 17, 2022), 1-050201-22-044 Suravak Road (issued April 25, 2022), 1-050090-22-045 Wood River Road (issued August 17, 2022), and 1-050000-22-162 Aleknagik Lake Road (issued July 21, 2022). Additionally, DOT&PF provided the following comment on right-of-way maintenance and operations:

- *Installation must not include cutting of any roadway asphalt on Suravak Rd or Aleknagik Lake Rd;*
- *Installation must not occur within the roadway ditches;*
- *If Installation is within DOT&PF right of way, it must be located as close to the edge of ROW as possible so that it is away from roadway maintenance activities; and*
- *Installation authorized within the right of way must be at a depth in which it is not impacted by vegetation management/maintenance.*

DOT&PF also stated that the applicant is to continue working with DOT&PF to secure permits where the applicant plans to use, occupy, or cross DOT&PF properties and interests. DOT&PF also identified that the proposed project involves two DOT&PF Regions (Central and Southcoast); the applicant will need to work with both regions.

Response: SCRO acknowledged the comment and forwarded it to the applicant.

Comment: On June 21, 2023, SCRO received a comment from ADF&G Division of Wildlife Conservation, Access Defense Program, summarizing the application and providing no objection to the proposed easement. The applicant is coordinating with ADF&G for the required Fish Habitat Permits.

Response: SCRO acknowledged the comment and forwarded it to the applicant.

No other comments were received.

ENVIRONMENTAL CONSIDERATIONS

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. There are no other known environmental considerations or constraints in this location.

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 assess 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 operation of a private telecommunications service, 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, SCRO recommends that approval of this easement will provide the greatest economic benefit to the State.

DISCUSSION

The applicant has requested a public utility easement for the purpose of construction, operation, and maintenance of a fiber optic broadband system. The proposed development will consist of below-grade fiber optic telecommunication cable and buried manholes at 20,000-foot intervals along a route on State-owned lands between Aleknagik, Ekwok, and Levelock, Alaska. Construction of the proposed development may include a crew of up to 12 people, and would take place in winter and summer months, with special consideration to environmental safety measures in areas with saturated soils, using the following equipment as described by the applicant: "a mini excavator, cable plow, directional drill, ripper-equipped dozer, trencher, and seasonally appropriate supply/transportation support vehicles." Any waste generated during construction will be transported to the construction staging area and disposed of in an approved landfill. After construction, the installation will be un-manned, but there may be a field crew that may access the development for visual inspection, as appropriate.

The applicant states that most of the fiber installation in uplands will be conducted by plow method. Any above-grade material produced, or any grade alteration made by plowing, will be manually replaced and tamped, as close to natural grade as possible. Areas with saturated soils (wetlands) will be constructed during times with winter conditions via a chain trencher (or a rock saw) to cut a slot into the soil to plow the cable. When trenching is necessary to bury the fiber installation, trench spoils will be placed into the trench and tamped. The depth of the cable will be 24 inches deep, so that in areas of discontinuous permafrost, the cable will be located above the permafrost to discourage thermo-karsting. The final ground surface following the installation will

be graded to closely match original ground contours. Buried manholes will be placed at approximately 20,000-foot intervals, to facilitate splicing fiber reals. The applicant will conduct construction to minimize disturbed soil footprint at the manhole sites, along with select stream crossings; adjacent soil disturbance will be backfilled naturally and tamped to original grade. Additionally, the applicant will create a Stormwater Pollution Prevention Plan (SWPP).

To minimize erosion to disturbed soils, the applicant states that forested areas that require clearing will only be cleared to ground surface to allow the root mass to remain. The contractor will use a trencher to cut the upper surface of the trench line to grub ahead of the cable plow. The applicant states that the work sites will be allowed to revegetate naturally to maintain natural vegetation types. For sites with larger amounts of disturbed soil, the applicant will comply with the SWPP and the Alaska Plant Materials Center to develop and distribute a grass seed mixture for revegetation.

The USACOE and BBAP indicate that construction areas of the proposed easement involve various wetlands. The applicant is responsible for adhering to USACOE's standards for constructing in wetlands and navigable waters, as well as avoiding impacts to wetlands, riverine areas, and sensitive moose and caribou wintering areas and caribou calving habitat.

The BBAP indicates that several large portions throughout the region contain areas that are important for caribou and moose calving, wintering, and rutting (2-14). The BBAP states that "uses that are likely to produce levels of acoustical or visual disturbance sufficient to disturb calving, rutting, or post-calving aggregations that cannot be seasonally restricted should not be authorized in these areas" (2-14). The applicant states that there will be a minor increase in noise "similar to road noise conditions near a city" during construction season. The applicant also states that there are "no anticipated long-term impacts to geologic, mineral or energy sources, nor to wildlife or threatened or endangered species". The applicant will need to contact ADF&G and submit a mitigation plan outlining their strategies to avoid, or compensate for, impacts to moose and/or caribou activity and habitat from construction activities.

SCRO recommends that the easement considered herein be granted for an indefinite term from the effective date of this decision, because the need for this easement can be expected to exist as long as the adjoining land requires utility service. DMLW-created easements may be terminated when the Grantor determines that the easement is abandoned, no longer in use for the purpose(s) authorized, or the easement is revoked as a result of violation of the terms and conditions.

PERFORMANCE GUARANTY

A performance guaranty is intended to incentivize compliance with the terms and conditions of the entry authorization and 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, appraisal, etc.), restoration (interim and final), and any associated costs after termination or expiration of the easement. SCRO recommends the applicant be required to submit a performance guaranty in the amount of \$140,000.00 to ensure completion of entry authorization requirements. These funds would also serve as a survey deposit (per AS 38.05.860) and may be reduced one time during the term of the entry authorization by an amount up to the contracted amount to a licensed surveyor for completion of an as-built survey. This performance guaranty

would remain in place during the term of the entry authorization and would be subject to release upon the acceptance of a DMLW-approved as-built survey and the fulfillment of all terms, conditions and stipulations of this decision and the entry authorization. The performance guaranty may also be adjusted to reflect updates and changes in the associated project, and the applicant may be required to provide an additional performance guaranty if DMLW determines there is additional risk to the State. The performance guaranty may be utilized by DMLW to cover actual costs incurred by the State to pay for necessary corrective actions in the event the applicant does not comply with site utilization and restoration requirements and other stipulations contained in the entry authorization. An additional performance guaranty may be required for an extension of the entry authorization beyond the initial term proposed under this decision.

INSURANCE

SCRO recommends that the applicant be required to submit proof of insurance in an amount the insurance company determines necessary to protect both the State and the applicant from risks associated with the planned activities under the easement for ADL 234005. The applicant will be responsible for maintaining the necessary insurance during the term of the easement. The insurance may be adjusted to reflect updates and changes in the associated project and the applicant may be required to furnish additional insurance if DMLW determines there is additional risk to the State. A certificate of insurance listing the State of Alaska, Department of Natural Resources as an additional insured on the policy, or other insurance acceptable to the State, must be submitted to DMLW prior to entry on state land and must be maintained throughout the term of the easement.

SURVEY

SCRO recommends that a DMLW-approved as-built 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 will be required to request survey instructions prior to issuance of the entry authorization. The survey must be produced in accordance with survey instructions provided by the DMLW Survey Section and stamped by a Professional Land Surveyor registered in the State of Alaska. A final easement will not be issued until the as-built survey has been approved by DMLW.

FEES

SCRO finds that the following fees are applicable to this request. These fees may be adjusted if regulation(s) or department fee schedule pertaining to the fee(s) change during the term of the entry authorization and/or easement. Fees will be subject to non-sufficient fund and late payment penalty fees. All fees shall accrue from the effective date of the decision.

- The applicant shall pay an annual interim land use fee of \$23,040, which is \$120.00 per acre rounded up to the nearest acre, per 11 AAC 05.070(d)(2)(I) and DMLW Director's Fee Order No. 3 for the term of this EA.
- The applicant shall pay a one-time land use fee of \$0.56 per linear foot rounded up to the nearest foot for a public easement for a utility per 11 AAC 05.070(d)(2)(C) and DMLW Director's Fee Order No. 3. The total charge for this fee will be determined following DMLW's approval of an as-built survey document.

The Grantee shall pay a fee of \$50.00 for any late payment.

Additionally, the applicant shall pay applicable document recording fees prior to DMLW's execution and recordation of the easement document.

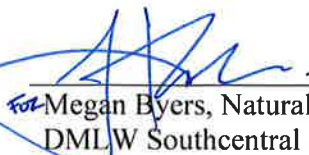
ENTRY AUTHORIZATION

The entry authorization is an interim authorization issued when a survey is necessary prior to easement issuance. SCRO recommends that an entry authorization be issued for a term ending seven (7) 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 private easement. The entry authorization may be revoked if the applicant has not supplied DMLW with a draft as-built survey within five (5) 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. No authorization shall be granted until the following deliverables have been provided to DMLW:

- Land use fees
- Evidence of having made a request for survey instructions to the DMLW Survey Section
- Evidence of a request for authorization of the proposed development on Bristol Bay Native Corporation, Ekwok Natives Limited, and Aleknagik Natives Limited owned/managed lands
- Insurance
- A Performance Guaranty

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 issuance of an easement as described above, on the condition that all stipulations are followed as described in the attached authorization.

 NRM1
Megan Byers, Natural Resource Specialist 2
DMLW Southcentral Regional Land Office

8/4/2023
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. This decision goes into effect and becomes a final administrative order and decision of the department on the 31st calendar day after issuance.


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

8/4/23
Date

ATTACHMENTS

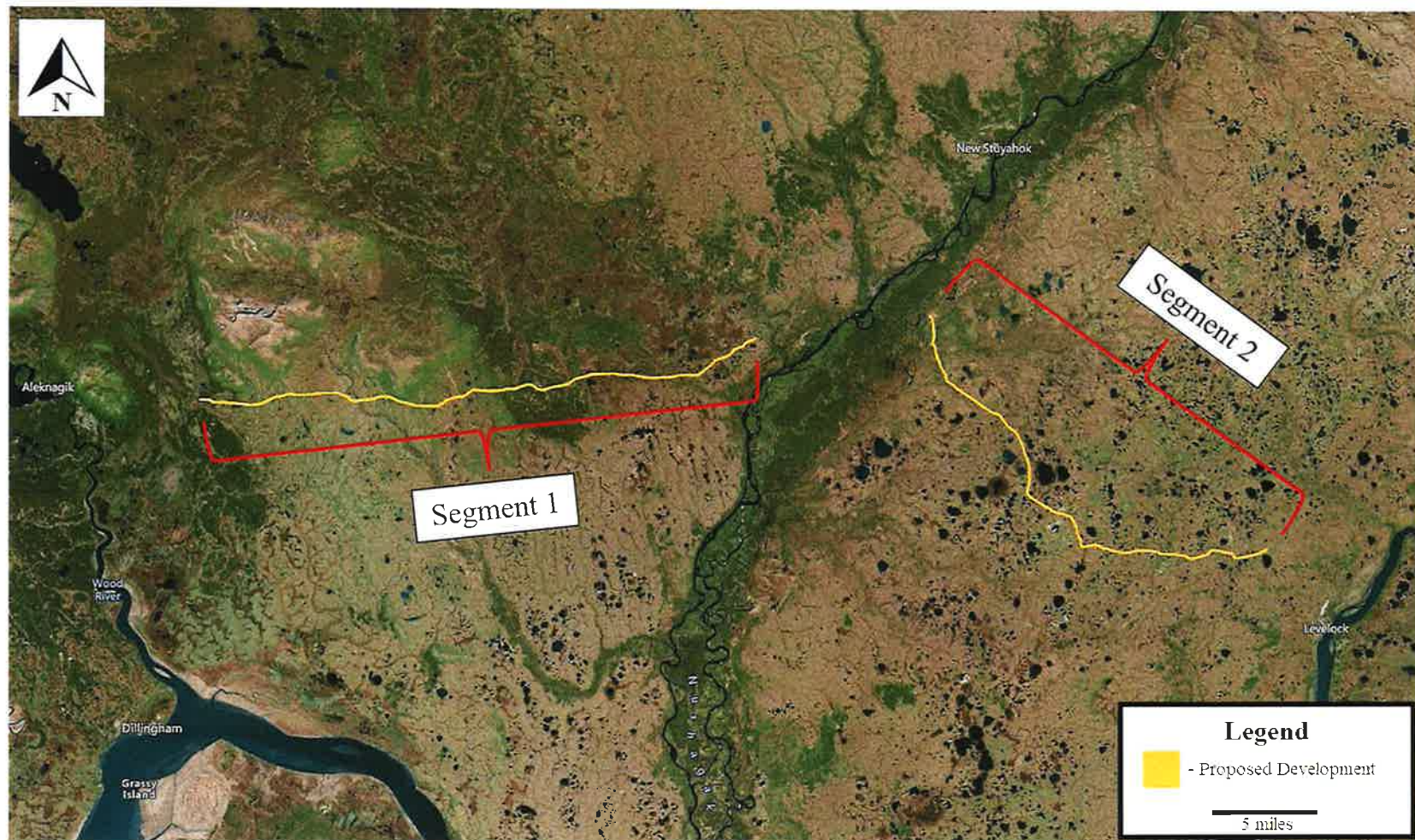
- Attachment A – an image provided by the applicant depicting the route of the proposed improvements.
- Entry authorization, unsigned
- Sample easement document

APPEAL

An eligible person affected by this decision may appeal 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)(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 DNR's Appeals Program via phone at (907) 269-3565, via email at dnr.appeals@alaska.gov, and is also available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>

Attachment A



A figure created by DMLW that depicts the proposed improvements (yellow lines) near Levelock, Ekwok, and Aleknagik, Alaska. This authorization is only for the proposed improvements on State-owned DMLW managed land, illustrated by the yellow lines.