



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

Southeast Regional Land Office

Regional Manager's Decision

ADL 106515

Baranof Property Owners Association

Application for Easement

AS 38.05.850

Executive Summary

On November 21, 2022, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW) received an application for reissuance of a private nonexclusive easement from Baranof Property Owners Association (BPOA) on State-owned, DMLW-managed lands near Baranof Warm Springs, Alaska. Pre-existing improvements include two cold water transmission lines (Segment A and Segment B) and one warm water transmission line (Segment C) which supply water to BPOA-member seasonal residences. The easement is approximately 2,050 feet in length, 5 feet in width, encompassing 0.235 acres, more or less.

BPOA (applicant) reports increased frequency of water line exposure and freezing in winter due to river depth variability at Segment B's current intake location. To remedy this, the applicant has proposed relocating the intake installation approximately 360 feet southwest (upriver) of the current site. No changes are proposed to Segment A or Segment C. Upon completion of the proposed extension, the easement would measure approximately 2,140 feet in length, 5 feet in width, and encompass 0.276 acres, more or less.

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 years to allow for installation of the proposed Segment B extension and completion of an updated easement diagram, a prerequisite for issuance of the final easement.

Segment A is a community hydropower cold water line consisting of a 6-inch diameter high density polyethylene (HDPE) pipe routed from the Baranof River to U.S. Survey 3110. It measures approximately 350 feet in length, 5 feet in width, encompassing 0.040 acres, more or less.

Segment B transmits cold water to BPOA member residences by means of a 4-inch diameter HDPE pipe routed from the Baranof River to U.S. Survey 3291A. To ensure consistent intake submergence and mitigate pipe freezing, the proposed extension will relocate the transmission line intake approximately 360 feet southwest to a site with deeper water. Using 5/16" link chains or half inch nylon straps, 20-foot lengths of 4-inch HDPE pipe will be secured to natural features (boulders and trees) along the north riverbank to connect with existing Segment B infrastructure. It will measure approximately 1,210 feet in length, 5 feet in width, and encompass 0.138 acres, more or less.

Segment C is a hot water line consisting of a 2-inch diameter plastic pipe routed from Warm Spring #1 and Warm Spring #2 to U.S. Survey 3291A. It measures approximately 850 feet in length, 5 feet in width, encompassing 0.098 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 private nonexclusive 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 106515.

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: North of Baranof River, adjacent to Baranof Townsite, approximately 19.5 miles east of Sitka, Alaska.

Property Description: DMLW managed uplands located within Section 24, Township 055 SOUTH, Range 066 EAST, Copper River Meridian, Alaska.

Width: 5ft **Length:** 2,140ft **Approximate Acreage:** 0.276

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 received title to applicable lands within Section 24 of Township 55 SOUTH, Range 66 EAST, Copper River Meridian, Alaska via PATENT 50-2011-0197, which is serialized by DNR as NFCG 222.

Planning and Classification

The proposed site is subject to the Northern Southeast Area Plan (NSAP 2002) and is located within Management Unit B-30. The designated land use is Ru (Public Recreation – undeveloped) which converts to Public Recreation Land as the land classification. According to 11 AAC 55.040(c), “A classification identifies the primary use for which the land will be managed, subject to valid existing rights and to multiple use.”

Management intent for unit B-30 is “to maintain the natural resources/scenic values of the parcel, protect the current water easement and trail authorizations, and ensure continuation of its use for dispersed recreation (NSAP 2002, 3-220).” The proposed easement is consistent with the NSAP’s land classification, management guidelines, and management intent.

Third Party Information

None.

Background

On February 15, 1999, DMLW granted easement ADL 106515 to a prior applicant for a term of 25 years. On February 1, 2016, DMLW issued a Decision Memorandum approving assignment of easement ADL 106515 to current applicant, BPOA. The assignment was recorded as document 2106-000063-0. On November 21, 2022, BPOA submitted an easement application for reissuance of ADL 106515.

Public Notice & Agency Review

Agency Review Summary

An Agency Review was conducted July 26, 2023, to August 25, 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 Archeology (DNR-DPOR OHA), Alaska Department of Natural Resources, Division of Mining, Land and Water (DNR-DMLW), and the Department of Transportation & Public Facilities (DOT&PF).

Agency Review Comment and Response

DOT&PF

Summary: Thank you for the opportunity to review the proposal. The Alaska Department of Transportation and Public Facilities has no comment at this time.

DMLW Response: Thank you for reviewing ADL 106515 application for easement and providing DOT’s response.

ADF&G

Summary: Alaska Department of Fish and Game (ADF&G) has reviewed the attached application from Baranof Property Owners Association for renewal of a 25-year easement which routes three transmission lines (Segments A, B, C, see below) from the Baranof River and upland springs across state-owned land, supplying water to seasonal residences. Access for construction and maintenance will occur for up to 5 people and will

be by foot, from the Baranof Lake Trail across public lands. ADF&G has no objections to the issuance of this easement. Thank you for the opportunity to review and comment. Additionally, we request a copy of the decision document when issued.

DMLW Response: Thank you for reviewing the application for easement ADL 106515. A copy of the decision document will be forwarded to ADF&G when issued.

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), U.S. National Forest Service (USDA NFS), Alaska Association of Conservation Districts (AACD), Southeast AK Conservation Council (SEACC), Central Council Tlingit and Haida Indian Tribes of Alaska (CCTHITA), Shee Atika, Incorporated, Sealaska Corporation, Sitka Tribe of Alaska (STA), City and Borough of Sitka (CBS), and Baranof Property Owners Association (BPOA).

Public Notice Comment and Response

Melissa Hofstad

Summary: I would like to speak in favor of granting both the renewal and extension of the application of ADL 106515. As a resident of Baranof, our cold water, and hot water line from spring 1, and 2 travel down this ROW. The extension is needed to further extend the cold-water line up the river for the use of our winter caretaker. Where the intake for the cold water is in the river now frequently freezes up, and it's been determined that there is a deeper and better place to take the water from that would be less likely to freeze up further upriver. This would prevent weeks of hand carrying water in buckets for our winter caretakers. Thank you for your prompt consideration.

DMLW Response: Thank you for submitting comments on Public Notice ADL 106515. Your comments will be included in the decision document.

Steven Morse

Summary: I am [a] Baranof Warm springs property owner, and I am writing to support renewing ADL 106515 combined water lines and the extension to improve our fresh water supply in the winter and keep the line from freezing. This is an important permit for all homeowners in the Bay, and the improvements applied for are necessary for fresh-water access to my cabin. Thanks for the opportunity to comment on this important issue.

DMLW Response: Thank you for submitting comments on easement application ADL 106515. Your comments will be included in the decision record.

Access

Physical and Legal Access: Easement is accessed over state-owned uplands using undeveloped game trails.

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.

Environmental risk associated with the proposed easement is minimal. There are no known environmental constraints or considerations for this site and the proposed use.

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.

Easement ADL 106515 effectuates BPOA member water rights by authorizing water line transmission across state-owned uplands to supply fresh water and spring water to individual residences, the Baranof Warm Springs community, and visitors. Transmission of water in a remote location develops State natural resources with minimal impact. The easement provides an indirect benefit to the State in the form of taxes, levies, fees, etc. assessed on residential properties by the City and Borough of Sitka. The easement provides modest but direct economic benefit to the State through the annual fees it generates.

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.

History of Compliance: DNR Land Administration System records indicate that the applicant is in a state of compliance with the terms of other DMLW-issued authorizations.

Performance Guaranty Narrative: The applicant is required to maintain the current performance guaranty in the amount of \$1,000.00 to ensure performance and, if required, removal of transmission lines under the terms of the easement. The guaranty may also be adjusted to reflect updates and changes in the associated project, and the applicant may be required to furnish an additional performance guaranty if DMLW determines there to be additional risk to the State. The 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 easement agreement.

Insurance

In accordance with 11 AAC 96.065, and in consideration of the low risk associated with the authorization and the applicant's history of compliance with DMLW-issued authorizations, insurance is not required at this time. DMLW reserves the right to require insurance during the term of the easement.

Survey

In lieu of a Record of Survey, the applicant is required to provide an updated, DMLW-approved easement diagram upon completion of Segment B extension. Attachment 1 is the current development diagram and will be the basis for the revised easement diagram.

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 annually for up to two acres, and \$120 annually for each acre above two. The annual fee for the Entry Authorization will be \$240.00.

Easement: In accordance with 11 AAC 05.070(d)(2)(A)(i), the fee for a private nonexclusive easement containing approximately 0.276 acres is \$600.00 annually.

Director's Fee Order: In accordance with 11 AAC 05.070(d)(2)(A)(i), fees are reduced to \$480.00 annually.

As a measure for incentivizing applicants to complete the required updated as-built easement diagram, both the entry authorization fee and the easement fee will apply during the term of the entry authorization. The total annual fee during the term of the entry authorization will be \$720.00.

Upon easement issuance, only the annual easement fee of \$480.00 will apply.

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 granted 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, operating, and maintaining the improvements considered herein prior to DMLW's issuance of a private nonexclusive easement. The entry authorization may be revoked if the applicant has not supplied DMLW with an approved updated easement diagram within the two-year term of the EA. 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:

- Payment of the Entry Authorization fee, \$240.00
- Payment of the easement fee, \$480.00
- Performance Guaranty, in the amount of \$1,000.00

Easement Term

The authorization requested under ADL 106515 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 of 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 private nonexclusive easement to BPOA 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 EA. 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
Mason Auger, Natural Resource Manager

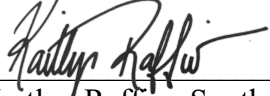
10/5/2023

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 106515 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 private nonexclusive easement, pursuant to AS 38.05.850, once the applicant has conformed to all terms and conditions of this decision and the EA.



Kaitlyn Raffier, Southeast Regional Manager

10/5/2023

Date

Attachments:

- Attachment 1. Development Diagram
- Attachment 2. 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>.