



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

Northern Regional Land Office

**Preliminary Decision  
Shovel Creek Wind LLC**

**ADL 421704:** Negotiated Lease - AS 38.05.070

**ADL 421869:** Public Easement - AS 38.05.850

This Preliminary Decision (PD) is the State's preliminary best interest finding regarding a proposed disposal of interest in state land. The public is invited to comment on this PD. The deadline for commenting is **5:00 pm Jan 29, 2024**. Please see the Public Notice section of this decision for requirements related to submitting comments for consideration.

**Requested Action**

Shovel Creek Wind LLC (applicant) submitted an application to the Department of Natural Resources (DNR), Division of Mining, Land & Water (DMLW) to lease up to approximately 450 acres of land within an overall project area of approximately 3,800 acres for a wind farm. This project is located in the Shovel Creek area west of Murphy Dome, approximately 18 to 25 miles WNW of Fairbanks. The applicant has requested a 40-year lease under AS 38.05.070. The project would consist of the following:

- Up to 63 wind turbines within individual lease parcels. These parcels will typically be approximately 330 feet by 460 feet, occupying approximately 3.5 acres. In no event will an individual turbine site exceed 5 acres;
- Up to 5 meteorological towers within individual lease parcels ranging from 1-4 acres per parcel, depending on the size and type of tower used;
- Maintenance facility on a parcel up to 5 acres;
- A substation on a parcel up to 3 acres;
- Potentially a battery energy storage system on up to 20 acres adjacent to the substation;
- A public access easement 100 feet wide encompassing roads up to approximately 55 feet in width, limited long parking areas for future maintenance, electrical cables known as controller cables, junction boxes, and communication cables. The majority of the electrical and communication cables would be buried, but a portion may need to be above ground; and
- During construction, temporary use of a laydown yard of up to 25 acres.

Please see Attachment A for the applicant's development plan which includes a map of the proposed project.

The proposed project would generate up to approximately 265 megawatts of electricity to provide to Golden Valley Electric Association (GVEA) as part of GVEA's effort to increase low-cost, reliable, and sustainable energy in its energy portfolio. This will require a new high voltage transmission line; the final desired route has not yet been determined. Authorization of this high voltage transmission line is not within the scope of this decision and will require a separate public process once an application is received.

## **Proposed Action**

DMLW proposes to issue a 40-year lease and an indefinite public access easement to the applicant for the construction, operation, and maintenance of a wind farm.

## **Scope of Decision**

The scope of this decision is to determine if it is in the State's best interest to issue a 40-year lease and public easement to the applicant. The administrative review for this authorization is defined by AS 38.05.035(e)(1)–(2) and limited to (1) reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and regulations; (3) the facts pertaining to the land or resources; and (4) any issues that are material to the determination.

## **Authority**

This lease application is being adjudicated pursuant to AS 38.05.035(a), AS 38.05.035(b)(1) and AS 38.05.035(e) (Powers and duties of the director), AS 38.05.070 (Generally), AS 38.05.075 (Leasing procedures), AS 38.05.850 (Permits), and AS 38.05.945 (Notice).

The authority to execute the PD, Final Finding and Decision (FFD), Entry Authorization (EA), and the Lease has been delegated to the Regional Managers of DMLW. Within the Northern Regional Land office (NRO), signature authority for all documents has been further delegated to Natural Resource Manager (NRM) 2's; signature authority to execute the EA and Lease document have been delegated to NRM 1's, and signature authority to execute the EA has been delegated to Natural Resource Specialist (NRS) 1 and above.

## **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 Eastern Tanana Area Plan (2015), the Yukon Tanana Area Plan (2014), the Tanana Valley State Forest Management Plan (2001), and other classification references described herein, and the casefile for the application serialized by DNR as ADL 421704 and ADL 421869.

## **Location Information**

### Geographic Location

The site is located approximately 18 to 25 miles west of downtown Fairbanks on ridgelines west Murphy Dome; north and south of Murphy Dome Extension Road. The elevation at the site ranges from approximately 1,900-2,560 feet.

### Legal Description

A tract of land including all or portions of:

Sections 2, 3, 11, 14-16, 20, 21, 28, 29, and 31-33, Township 1 North, Range 5 West, Fairbanks Meridian;  
Sections 6, Township 1 North, Range 4 West, Fairbanks Meridian;  
Sections 5, 6, and 18, Township 1 South, Range 5 West, Fairbanks Meridian;  
Sections 1, 12, and 13, Township 1 South, Range 6 West, Fairbanks Meridian;  
Sections 30, 31, and 32, Township 2 North, Range 4 West, Fairbanks Meridian;  
Sections 12, 13, 24, and 25, Township 2 North, Range 5 West, Fairbanks Meridian;

within the Fairbanks Recording District, Fourth Judicial District, State of Alaska. See Attachment A.

#### Other Land Information

Borough/Municipality: Located within the Fairbanks North Star Borough. No Borough lands are impacted.

Regional/Village Corporation: The regional corporation is Doyon Limited. No regional corporation lands are impacted.

#### **Title**

Multiple DNR Title Reports (RPTs 22288, 22289, 23090, 22290, 22291, 23089), issued on April 5, 2023, and April 23, 2023, from DMLW's Realty Services Section attest that the State of Alaska holds title to the lands associated with ADLs 421704 and 421869 under a series of US Patents, specifically:

- Applicable portions of Sections 2, 3, 11, 14-16, 20, 21, 28, 29, and 31-33, Township 1 North, Range 5 West, Fairbanks Meridian, per US Patent 50-80-0115. The associated DNR selection casefile is GS 432.
- Applicable portions of Section 6, Township 1 North, Range 4 West, Fairbanks Meridian, per US Patent 50-73-0017. The associated DNR selection casefile is GS 29.
- Applicable portions of Sections 5, 6, and 18, Township 1 South, Range 5 West, Fairbanks Meridian, per US Patent 50-73-0015. The associated DNR selection casefile is GS 38.
- Applicable portions of Sections 1, 12, and 13, Township 1 South, Range 6 West, Fairbanks Meridian, per US Patent 50-73-0016. The associated DNR selection casefile is GS 33.
- Applicable portions of Sections 30, 31, and 32, Township 2 North, Range 4 West, Fairbanks Meridian, per US Patent 50-86-0389. The associated DNR selection casefile is GS 432. Excepting and reserving to the United States a right-of-way, serialized F-026138, for the Corps of Engineers; this ROW extends to the east of USS 4084 and does not impact the proposed project.
- Applicable portions of Sections 12, 13, 24, 25, Township 2 North, Range 5 West, Fairbanks Meridian, per US Patent 50-87-0233. The associated DNR selection casefile is GS 432.

All the above patents include the standard reservations for ditches, canals, railroads, and telegraph and telephone lines. There are no other reservations within the proposed leasehold and easement location.

#### **Adjacent Landowners**

The following landowners own parcels of land near the proposed project location:

Casandra Clolane Rudy  
Kerry and Stephen Platzke  
Carol P. Kastelic Trust  
Carla Helfferich

Henry Dyer Tiffany III  
Hudson Crew Trust  
Carla J. and David Henry Nyquist  
William E. Shiels  
Joy Sykes  
Grant Matheke  
Frontier International Land Corp.  
Michael A. Dagon  
Pack Gail

Notice of the Preliminary Decision will be sent to each of the above adjacent landowners.

### **Third Party Interests**

Third party interests exist where the proposed lease and easement overlap with other authorizations. The Alaska Department of Transportation (DOT) has a road easement, serialized as ADL 407800, for the Murphy Dome Extension Road. The applicant plans to use this road in conjunction with the proposed easement to access the project location. ADL 407800 is managed by DOT. DOT was included in the agency review for this project, comments received by DOT are addressed below in the agency review section.

The Alaska Gasline Development Corporation (AGDC) has pipeline leases within and adjacent to the project area serialized as ADL 418997 and ADL 421297. AGDC was included in a courtesy notice on the proposed project, and comments received by AGDC were substantially similar to those received from the State Pipeline Coordinator's Section and are addressed in the Agency Review section below.

Notice of the decision will be sent to each party.

### **Planning and Classification**

The proposed lease and easements are within units F-17, F-11, and L-01 of the Eastern Tanana Area Plan (ETAP) adopted August 2015. (ETAP, Map 3-2a) and within unit L-1 of the Yukon Tanana Area Plan (YTAP) adopted January 2014. (YTAP, Maps 3-2b)

Both units L-01 of the ETAP and L-1 of the YTAP are within the Tanana Valley State Forest (TVSF) (AS 41.17.400), are designated as forestry, and management is guided by the TVSF Management Plan (TVSFMP). Per AS 41.17.200, state forests are to be managed for timber resources while allowing other beneficial uses of public land.

The proposed project area falls within Management Units 4C and 4D of the Tanana Valley State Forest Management Plan. (TVSFMP p.102). The only prohibited use of state land in these units are "remote cabins." Commercial use of state land is not prohibited in this area of TVSF (TVSFMP p. 101). The proposed activity is within the intent of the TVSFMP.

Under the ETAP, lands within units F-17 and F-11 are designated Habitat and Public Recreation-Dispersed. The management intent for lands designated Public Recreation-Dispersed lands indicate that "other uses may be appropriate if recreation functions can be maintained, the use can

be made to be compatible with the management intent for areas designated [Public Recreation-Dispersed], and it is determined that the authorization of the use would be in the best interest of the state.” (ETAP, 3-10). The management intent for lands designated Habitat indicate that “other types of uses may be authorized if habitat functions can be maintained, the use can be made to be compatible with the management intent for areas designated Habitat.” (ETAP, 3-8).

The proposed project is located in an area with significant recreational use for a variety of uses including, but not limited to, hiking, skiing, hunting, and motorized use. Roads associated with this project will improve access along these ridgetops, allowing for increased recreational opportunities.

While the proposed project request is for a larger acreage of land, the maximum development area for the proposed project is 450 acres. This development is spread out between the easement and separate lease parcels which decreases wildlife impacts as opposed to disturbing a contiguous 450 acres. ADF&G and USFWS were included in the agency review for this project and shared specific wildlife considerations which are addressed in the agency review section below.

The proposed project is consistent with the area plans as the project is for a public utility and is a general public benefit. In addition, the development plan will improve access to the area for recreational use of the area. Furthermore, it is being developed in such a way to limit impact to both the land as well as other users. DMLW has determined that the proposed lease is consistent with the classification, designation, and management intent of the Eastern Tanana Area Plan and the Yukon Tanana Area Plan.

### **Traditional Use Finding**

The proposed project site is located almost entirely within the Fairbanks North Star Borough. Pursuant to AS 38.05.830, a traditional use finding is not required for projects located within the boundaries of a municipality. The only portion of the project which is not within the Fairbanks North Star Borough is the portion which traverses through Sections 1, 12, and 13, Township 1 South, Range 6 West, Fairbanks Meridian. A traditional use finding is required for these sections only.

The out-of-borough portion of the project area is located on top of a ridge line south of Murphy Dome Road Extension, and north of the extended forestry roads which connect to Standard Creek Road. This portion of the project is located within Game Management Unit 20 B. This unit is open to hunting for a wide variety of animals including: dall sheep, brown bear, caribou, and moose. This out-of-borough portion does not overlap with any streams or bodies of water. Hunting is common in the greater area. Other common activities in the greater area are berry picking and firewood collection.

As described by the Alaska Department of Fish and Game (ADF&G), subsistence resources are widely distributed and used throughout the area. However, the site is located within the Fairbanks Nonsubsistence Use Area, as defined by the Joint Board of Fisheries and Game. Per AS 16.05.258, a nonsubsistence area is an area “...where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life....”

The proposed project should facilitate the sort of traditional uses which the area supports by expanding access to the area. Given this, the out-of-borough portion of the project is not anticipated to negatively impact known traditional uses. Additional traditional uses may be identified during the public notice period. If further traditional uses that may be impacted by the out-of-borough portion of the project become evident, they will be discussed in the FFD.

### **Access**

The proposed easement, ADL 421869, in conjunction with the Murphy Dome Road Extension (ADL 407800), which extends from Murphy Dome Road to the Chatanika River, provides physical and legal access to the proposed leasehold parcels. This road would be widened to 36 feet to accommodate the components that will need to be brought in. There will be up to 5 intersections between ADL 421869 and Murphy Dome Road Extension, located between MP 2 and 8. The precise intersection locations will be determined in consultation with DOT after Geotech work has been performed.

### **Access Along Navigable and Public Waters**

The proposed lease does not intersect any public or navigable waters; no easements will be reserved pursuant to AS 38.05.127.

### **Public Trust Doctrine**

The Public Trust doctrine does not apply to the proposed lease.

### **Reservation of Mineral Estate**

In accordance with section 6(i) of the Alaska Statehood Act and AS 38.05.125, the state, in this decision, reserves unto itself the mineral estate, including oil and gas, and the rights expressed in the reservation clause of the statute, that being the right to reasonable access to the surface for purposes of exploring for, developing and producing the reserved mineral resources. Exploration and development, if any, which could occur, would be consistent with AS 38.05.130 and other applicable statutes and regulations.

### **Mineral Orders**

Mineral Order 1162A01 closes to locatable mineral entry all state and state selected land within ADL 418997 which overlaps with this proposed lease in several locations.

The remainder of this proposed project is located in an area with no history of mining claims and no expected potential conflicts with subsurface resources.

### **Hazardous Materials and Potential Contaminants**

Hazardous materials, specifically lithium batteries and lubricant oil, will be stored within the proposed leasehold. Stipulations will be included in the lease to ensure proper handling and storage. The use and storage of all hazardous substances must be done in accordance with existing federal, state, and local laws. Debris (such as soil) contaminated with used motor oil, solvents, or other chemicals may be classified as a hazardous substance and must be removed from the leasehold and disposed of in accordance with state and federal law. Through the engineering and development phase of this project the extent of battery storage will be determined. Hazardous

materials will be limited and designed for site specific environmental protection for hazards deemed essential to have on site.

### **Solicitation of Interest**

An initial solicitation of potential competitive project interest was conducted from November 8, 2021, through December 8, 2021. A supplemental solicitation of interest was conducted from September 30, 2022, through October 30, 2022, because the proposed development plan was amended to add area to the proposed lease area in the following sections: Sections 5, 6, and 7, Township 1 North, Range 4 West, Fairbanks Meridian; Sections 2, 10, 11, and 12, Township 1 North, Range 5 West, Fairbanks Meridian; and Section 35, Township 2 North, Range 5 West, Fairbanks Meridian.

No other potential competitive wind project interest was received during either solicitation of interest period.

### **Agency Review**

An initial agency review was conducted on June 29, 2022, through July 27, 2022.

The following agencies were included in the reviews:

- Tim Shilling, DNR, DMLW, Land Conveyance Section
- Bruce Sackinger, DNR, DMLW, NRO, Permits & Easement Team
- DNR, DMLW, Statewide Abatement of Impaired Land (SAIL) Section
- DNR, Division of Parks, Office of History and Archaeology (OHA)
- DNR, Mental Health Trust Land Office (MHTLO)
- DNR, Division of Oil & Gas, Statewide Pipeline Coordinator's Office (SPCO)
- Ashley List, DNR, Division of Forestry (DOF)
- Alaska Department of Environmental Conservation (DEC), Agency Review Email
- Audra Brase, Alaska Department of Fish & Game (ADF&G), Division of Habitat
- Garrett Carter, Alaska Department of Transportation (DOT), Right-of-Way Section
- Heather O'Claray, DOT, Right-of-Way Section
- Bob Henszey, U.S. Fish & Wildlife Service (USFWS)
- Ellen Lyons, U.S. Army Corps of Engineers (USACE)
- Joni Scharfenberg, Fairbanks Soil and Water Conservation District (FSWCD)

### **Agency Review Summary**

The following comments were received:

DNR DMLW LCS Comment: No objection.

*DMLW Response:* Comment noted.

MHTLO Comment: The MHTLO manages lands owned by the Alaska Mental Health Trust Authority according to AS 38.05.801 and 11 AAC 99. The applicant's Development Plan indicated the proposed lease is not on or adjacent to Trust land. Commercial or utility use of Trust land requires a written authorization, and in the event that a proposed easement area proposes to traverse

Trust lands, then the interested party may submit an application for use of Trust land at <https://alaskamentalhealthtrust.org/trust-land-office/land-sales/land-use-application/>.

*DMLW Reponse:* Comment noted and forwarded to the applicant.

USFWS Comment: The USFWS comments centered around three major topics within their area of expertise:

1. Eagles have been noted in the general area; a USFWS permit may be required if eagles are present.
2. The USFWS recommends the applicant work with the USFWS to minimize impacts to both eagles and other migratory bird species.
3. The USFWS notes that large construction projects can spread invasive species into new areas and recommended developing a mitigation plan based on Best Management Practices.

*DMLW Reponse:* The comments from USFWS have been forwarded to the applicant.

1. The applicant has been in direct communication with ADF&G and the USFWS regarding the presence of eagles in the area and whether a permit from the USFWS will be required. These conversations are ongoing. Additionally, they currently hold a permit, LAS 34647, which authorizes research on wildlife presence and habitat in the project location, including eagle nest surveys.
2. We have forwarded this comment to the applicant and asked them to work with the USFWS to develop appropriate bird strike mitigation strategies to ensure compliance with the Migratory Bird Treaty Act. DNR approval of this plan will be required prior to turbine pad construction.
3. Gravel used in construction can be a risk factor for the spread of invasive species. There are no certified weed free sites within the vicinity of the project, and specific source locations for material sources have not yet been identified. Once these sources are identified and evaluated, DNR will work with the applicant to develop site specific BMP's related to invasive species. If these sources are on DMLW managed lands, additional authorization and a separate public process will be required.

SAIL Comment: Several topics were raised by this agency comment:

1. *Wildland Fire Considerations:* The application materials do not discuss wildland fire considerations such as a potential alert system or regular brush cutting schedule around the pads to prevent fuel sources.
2. *Coordination:* The applicant should coordinate with the local road commission for the Murphy Dome and Old Murphy Dome Road area, as delivery of large or heavy infrastructure could impact local roads which are subject to annual frost heaves.
3. *Access Restrictions:* Will there be any restrictions, such as gates or fences, to the proposed access easement sought under this authorization?
4. *Potential Contamination:* A portion of the lease development area has been used as an informal shooting range. While the applicant is developing and constructing the project, if an area is an obvious shooting area (such as an abundance of shells on the ground) the applicant should reach out to NRO for consultation. NRO can then work with the SAIL section to determine if soil screening should occur or if a different location is appropriate.



*DMLW Response:* The comments from SAIL have been forwarded to the applicant.

1. Standard stipulations include stipulations addressing fire suppression and response. The applicant does intend to brush within their lease parcels annually to reduce fire risk.
2. Murphy Dome Road is managed by DOT, and the applicant is coordinating with DOT for use of the road. It is unlikely that the applicant will be using Old Murphy Dome Road.
3. While not specifically requested, it is likely that the applicant will need to control access along the requested road easements during construction of the project. Post-construction, access restrictions along the easement are not anticipated.
4. This office notes the northeastern string of towers partially corresponds with an area known to have been used for shooting. However, further consultation with SAIL indicates the risk of significant contamination is low. The applicant will be encouraged to minimize off-site movement of soil from this area.

DOT Comment: “It appears that there is the potential for issues with construction traffic. Trucks carrying windmill poles and other oversized loads may have trouble negotiating turns, which could have short-term impacts on blocking intersections during development. Lane closure permits and traffic control may be necessary.

A lay-down yard was not identified in the materials submitted for review. Routing and number of trucks/day are important to impacts on Murphy Dome Rd (MDR). MDR is fairly narrow and has a lot of non-motorized use and, at present, very little truck traffic. Some sight restrictions from vertical alignment on MDR and pavement instability associated with permafrost.

Please direct the applicant to work with DOT&PF’s Northern Region Traffic Safety and Right-of-Way Groups in Fairbanks.”

*DMLW Reponse:* The applicant’s development plan includes plans for a lay-down yard. DMLW directed the applicant to reach out to DOT for coordination and driveway permits for connection with Murphy Dome Road Extension, if necessary. Any required DOT approved traffic safety plans and driveway permits must be provided to DMLW prior to construction activities commencing.

SPSC Comment: The proposed project has the potential to enter or cross the following AS 38.05 pipeline right-of-way leases: ADL 418997 – Alaska Stand Alone Pipeline (ASAP), and ADL 421297 – Alaska LNG Mainline Pipeline (AKLNG Mainline). SPCS requests that before issuance of the competitive lease or the public access easement the applicant get written confirmation from the pipeline lessee, Alaska Gasline Development Corporation (AGDC) that there will be no conflicts of use between the projects as proposed, including potential conflicts with the proposed yard with the material sites and access roads related to ADL 421297. AGDC’s written confirmation should be copied to SPCS. SPCS appreciates the land management efforts from DMLW with SPCS to help resolve any potential conflicting land use.

*DMLW Reponse:* DMLW will require the applicant to coordinate with AGDC regarding the ASAP and AKLNG Mainline projects. However, both projects will need to coordinate with DOT regarding use of ADL 407800 which is a pre-existing valid right encumbering all three projects in the area. While the project area boundary overlaps with ADLs 418997 and 421297, the turbine

locations provided by the applicant are approximate only. DMLW is not proposing to lease all lands within the project area boundary, merely a series of discrete parcels connected by a public access easement. ADLs 418997 and 421297 are pre-existing rights and long term infrastructure cannot impair use of these leases. Lease parcels will not be allowed within the boundaries of these authorizations without written non-objection from AGDC. Construction of roads and associated infrastructure will also require coordination with AGDC, and subject to these leases.

ADF&G Comment: Ridges that border Minto Flats to the east are a corridor for migratory birds, especially raptors, in the fall and in the spring. ADF&G has trapped raptors including peregrine falcons, goshawks, red-tailed hawks, sharp-shinned hawks, gyrfalcons, merlins, and hawk owls within the project locations along with bald and golden eagles.

*DMLW Reponse:* This information was forwarded to the applicant. Prior to construction of the proposed project, the applicant is carrying out wildlife studies to identify wildlife activity within the project area, will need to obtain all necessary permits from ADF&G and the USFWS, and will need a DNR approved bird strike mitigation plan which is to be developed in consultation with ADF&G and USFWS.

DOF Comment: “*Roads and Access:* The project calls for approximately 22 miles of road development. Except where roads provide immediate entry to the project facilities, constructed roads within or accessing the TVSF should be open to DOF, its contracted loggers, and the public in accordance with the TVSF Management Plan. Additionally, access should remain unrestricted to any future DOF timber harvest that may be within the leased area, except for developed turbine sites or related facilities.

*Timber Salvage:* Timber with commercial or personal use values should be salvaged from lands that are to be cleared for this project, where feasible and prudent; the leased area may contain some areas of hardwood timber stands.

*Wildfire Mitigation:* Any authorization from DMLW should acknowledge the active fire regime in this area (fire return interval of 100-150 years) and include stipulations regarding wildland fire. The proposed development would create more infrastructure within the TVSF needing protection and may likewise limit DOF’s options to use prescribed fire as described in Timber Management Goal C. Forest Protection. The development plan also mentions a potential battery energy storage system to be located in the yard; battery energy storage systems pose unique fire risks and challenges to fire suppression. DOF requests that the battery energy storage system be located far enough from vegetation to minimize the risk posed by accidental fire to surrounding forest resources.

*Scenic Quality:*

The TVSF Management Plan includes management guidelines to minimize the adverse impacts of development activities on scenic values. More specifically for Unit 4, Management Guideline 7 Scenic Quality states:

*Development activities on the western side of Unit 4 will be sited and designed to enhance or minimize harm to scenic quality of State Forest land visible from heavily used areas in*

*Minto Flats to the extent feasible and prudent. Chapter 2 guidelines for the management of visual resources will apply to these areas. The Scenic Values guideline of the Recreation section of Chapter 2 contains scenic value guidelines... (p. 96).*

Forest wide and unit-specific management guidelines require disturbance activities, like timber harvests or a wind farm, to be sited in such a way that the impacts to aesthetics or other valuable resources are minimized (see Transportation Management Guidelines G. Protection of Scenic Resources and K. Siting Utilities p. 72-74). The proposed location is visible from Minto Flats and immediately visible from the top of Murphy Dome and other high points in the area. There are a lot of eyes on that location because it is heavily used for recreation. Many members of the public hike, hunt, fish, ATV, snowmachine, dog mush and collect berries in that area. The project may not be visible from much of the TVSF due to low topographic relief and heavy canopy cover.

Scenic quality is important to consider with land use requests in this area. However, DOF recognizes that some adverse impacts from wind towers on scenic values are unavoidable due to the necessary height of the towers. A viewshed analysis would be helpful to determine what areas of the TVSF are impacted by which portions of the project, and to understand the extent to which it is feasible and prudent to site the towers to minimize harm to scenic quality.”

*DMLW Response:*

- Roads and Access: The proposed easement is a public easement and will not restrict any DOF timber harvest within the area, aside from the developed areas if site control is necessary.
- Timber salvage: DMLW will require the applicant to deck timber greater than 6-inch diameter at breast height (DBH) in a location that it can be made available by DNR to the public for firewood.
- Wildfire mitigation: DMLW will include its standard wildfire stipulation, which states, *“The grantee shall take all reasonable precautions to prevent and suppress forest, structure, brush and grass fires, and shall assume full liability for any damage to state land and structures resulting from the negligent use of fire. The State is not liable for damage to the grantee’s personal property and is not responsible for forest fire protection of the grantee’s activity. To report a wildfire, call 911 or 1-800-237-3633.”* The applicant has provided wildfire mitigation measures in their development plan which includes brushing within their lease parcels annually to reduce fire risk.
- Scenic quality: This project location was identified as having the appropriate wind resources, proximity to constructed infrastructure, as well as minimizing visual impacts to the greater Fairbanks area. Visual analysis modeling indicates much of the Fairbanks and Goldstream communities will be unable to see the project. While the viewshed of northwest facing slopes are more likely to be impacted there is not another location with similar wind resources and proximity to constructed infrastructure that would cause less visual impact to the area.

No other agency comments were received.

## Supplemental Agency Review

A supplemental agency review was conducted from November 9, 2022, to November 23, 2022 in response to an updated development plan and an additional area to the proposed project footprint.

The following agencies were included in the review:

Tim Shilling, DNR, DMLW, Land Conveyance Section  
Bruce Sackinger, DNR, DMLW, NRO, Permits & Easement Team  
DNR, DMLW, Statewide Abatement of Impaired Land (SAIL) Section  
DNR, Division of Parks, Office of History and Archaeology (OHA)  
DNR, Mental Health Trust Land Office (MHTLO)  
DNR, Division of Oil & Gas, Statewide Pipeline Coordinator's Office (SPCO)  
Ashley List, DNR, Division of Forestry (DOF)  
Alaska Department of Environmental Conservation (DEC), Agency Review Email  
Audra Brase, Alaska Department of Fish & Game (ADF&G), Division of Habitat  
Garrett Carter, Alaska Department of Transportation (DOT), Right-of-Way Section  
Heather O'Claray, DOT, Right-of-Way Section  
Bob Henszey, U.S. Fish & Wildlife Service (USFWS)  
Ellen Lyons, U.S. Army Corps of Engineers (USACE)  
Joni Scharfenberg, Fairbanks Soil and Water Conservation District (FSWCD)

## Supplemental Agency Review Summary

The following comments were received:

USACE Comment: If the development of this project results in the discharge of fill into waters of the U.S. (including wetlands), a permit from the Corps of Engineers would be required. Information regarding the Corps Regulatory program can be found at: <https://www.poa.usace.army.mil/Missions/Regulatory/>. The Corps encourages applicants to schedule a pre-application meeting to discuss the proposed project. The Corps has no comments regarding the leasing of the land.

*DMLW Response:* This information has been forwarded to the applicant.

USFWS Comment: A reassessment of waste generated by the project should include those parts that will need replacement during the proposed project life, including blades. For example: where will replaced blades be deposited when disposed, what will the process entail, where will waste materials be stored, and what are the likely impacts? USFWS recommends recycling waste materials when practical or disposing in an existing approved site such as the Fairbanks landfill rather than disposing onsite. USFWS recommends placing all new electric lines along already established roads and already disturbed areas, to help minimize impacts to birds and their habitat.

*DMLW Response:* Waste generated from the project will be taken out of the project location and disposed of properly. Wind turbines removed from the site will be recycled. The applicant's development plan contemplates using existing GVEA lines and GVEA easements.

### FSWCD Comment:

- 1.) FSWCD supports the development of alternative renewable energies within the Fairbanks North Star Borough including expanding power to underserved areas.

- 2.) FSWCD recognizes that Murphy Dome and the extension road are an important access area for subsistence, recreation, and tourism opportunities; therefore, FSWCD suggests including the public stakeholders at early stages in the planning.
- 3.) FSWCD would like to know more about how the Shovel Creek Wind Farm will affect wildlife in the proposed area, particularly migratory birds and resident game birds.

*DMLW Response:* Please see the discussion on wildlife from ADF&G in the agency review section of this document. Please be advised that the applicant has begun community outreach efforts by holding community meetings on November 10-12, 2023.

No other comments were received.

### **Courtesy Review**

A courtesy review was conducted from June 29, 2022, to July 29, 2022 to Golden Valley Electric Association (GVEA), as the local electric utility, the Fairbanks North Star Borough (FNSB) as the local municipality, and the Alaska Gasline Development Corporation as a lessee of potentially impacted lands. A supplemental courtesy review was conducted from November 9, 2022, to November 23, 2022, in response to an updated development plan and an additional area to the proposed project footprint.

### **Courtesy Review Summary**

The following comments were received:

AGDC comment: AGDC comments were similar to those submitted by SPCS. Please see comments and responses above.

No other comments were received.

### **Background**

According to the U.S. Energy Information Administration (EIA) Alaska's total energy consumption is among the 10 lowest states, but its per capita energy consumption is the fourth highest in part because of its small population, harsh winters, and energy-intensive industries. In early 2022, the State announced new timelines for renewable energy generation: 20-percent of Alaska electricity generation by 2025, 30-percent by 2030, 55-percent by 2035, and 80-percent by 2040.

On October 27, 2021, Shovel Creek Wind, LLC submitted an application for a 40-year lease for up to 2,706 acres of state land, with an anticipated development area of 128 acres, for a wind farm to be located in the Shovel Creek area west of Murphy Dome, approximately 18 to 25 miles WNW of Fairbanks. In order to address access to the proposed lease, the applicant submitted a public easement application on May 10, 2022, which requested approximately 22.5 miles of access roads to support the project.

DMLW posted a Solicitation of Interest (SOI) for the proposed lease area from November 8, 2021, to December 9, 2021, and DMLW received no interest. On September 9, 2022, the applicant submitted an updated development plan which included additional land to the original lease

application and requested to lease a total of up to 3,655 acres of state land, with an anticipated development area of 450 acres, inclusive of the turbines, substation, associated infrastructure, and public access easements. DMLW posted a supplemental SOI for the updated proposed lease area from September 30, 2022, to October 31, 2022, and DMLW received no interest. Due to receiving no interest during the SOI, AS 38.05.070(d) authorizes DNR to negotiate a lease directly with the applicant without necessity of an auction.

Several individuals contacted this office regarding this project prior to the release of this decision; public notice materials will be sent to them.

### **Discussion**

DMLW proposes to issue a 40-year negotiated lease and a public access easement to Shovel Creek Wind, LLC for the construction, use, and maintenance of a wind farm which will provide the following benefits:

1. This project will diversify the GVEA power generation portfolio and will contribute to meeting the State's benchmarks for renewable energy generation;
2. This project will increase locally produced power to the interior, lowering costs to the community and improve electrical grid stability in the region;
3. The project contemplates associate infrastructure such as roads which will open up new areas for subsistence and recreational use by the public;
4. Project construction and operations will provide jobs and economic opportunities in the State; and
5. Leasing fees from the commercial use of this State land will provide an ongoing revenue stream.

While there are potential impacts to other resources and users, such as wildlife and recreation impacts, mitigation measures imposed by DNR and anticipated compliance with other regulatory agencies reduce these risks and impacts to an acceptable level. The proposed lease and easement will include stipulations for access and wildlife considerations and will require the applicant to comply with all laws and regulations that exist for the protection of wildlife.

DMLW proposes to issue a public access easement 100 feet in width to the applicant, Shovel Creek LLC. DMLW further proposes to retain the right to reassign the easement to itself in the future, if in the State's interest. This easement would authorize the road, as well as the power collection and transmission infrastructure such as connector cables and junction boxes, as well as communication infrastructure such as fiber optic cables, vaults, and connection pedestals.

For the reasons stated above, it is in the best interest of the State to issue a 40-year non-competitive negotiated lease and public easement to Shovel Creek Wind LLC. The term of the lease will reasonably align with the lifespan of the proposed infrastructure. The proposed lease will be subject to the terms of DMLW's standard lease document and easement document effective at the time the lease and easement are signed. The lease and easement may also be subject to additional stipulations based on site specific considerations that are identified in the adjudication process.

As mentioned above, DMLW will require coordination between the applicant and AGDC for their respective projects along Murphy Dome Road. The applicant will also be required to obtain all

necessarily authorizations from DOT for any road improvements necessary under its development plan.

DMLW will require the applicant to work with ADF&G and USFWS to develop appropriate bird strike mitigation strategies to ensure compliance with the Migratory Bird Treaty Act. DMLW will also require the applicant to obtain all necessary permits from ADF&G and the USFWS. Applicant will also be required to submit the bird strike mitigation plan for DMLW approval. Plan approval will be required prior to turbine construction.

DMLW proposes to accept the applicant's rehabilitation proposal, which stated "*We wish to leave the roads, pads, and subsurface turbine foundations in place. The roads and pads may be beneficial for future uses/users. The turbine foundations are inert and removal would cause substantial surface disturbance with little or no benefit. Turbines and unused above ground electrical infrastructure would be removed and recycled to the extent possible and practical.*" DMLW notes this is a conceptual agreement with leaving the foundations, roads, and pads in place, with removal of the turbines and other above ground infrastructure: a specific rehabilitation plan will need to be submitted for review and approval prior to the end of the lease term. DMLW encourages the applicant to recycle used materials such as electrical lines and turbine components as much as possible.

Under AS 38.05.035, DMLW is obligated to lease land at no less than fair market value (FMV). Given the current goals set by the State to facilitate renewable energy, compensation under the lease shall be set at fair market value of the lands to be leased. Compensation is discussed further below.

### **Development Plan**

The Development Plan (DP) attached to this decision (Attachment A) and dated November 13, 2023, is under consideration by DMLW. Should the proposed lease be granted, it is anticipated that the DP will need to be updated throughout the life of the lease as activities and/or infrastructure are added or subtracted. All updates must be approved, in writing, by DMLW before any construction, deconstruction, replacement of infrastructure, or change in activity will be authorized. DMLW reserves the right to require additional agency review and/or public notice for changes that are deemed by DMLW to be beyond the scope of this decision.

### **Performance Guaranty**

A performance guaranty is intended to incentivize performance of the conditions of the entry authorization and final authorizations and provide 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 an authorization. To minimize risk to the State and the public, DMLW will require that once the final design is completed, the applicant provide an estimate to safely remove all infrastructure required to be marked and/or lighted by the FAA. Typically, this consists of structures over 200 feet tall, but the FAA reserves the right to require additional marking based on a site-specific analysis. A performance guarantee in this amount strikes the appropriate balance of ensuring public safety while incentivizing overall compliance with all terms and conditions of the authorizations. Performance guaranties are subject to periodic adjustments being made during the

term of the authorization to address increases or decreases in the costs of rectifying problems and rehabilitating state land due to inflation, changes in the level or nature of development, or other appropriate factors.

The performance guaranty must be provided prior to beginning construction.

### **Insurance**

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

### **Survey**

Survey instructions for both the lease and the easement must be requested prior to construction.

Lease: In accordance with AS 38.04.045, the applicant must complete an approved survey according to the requirements and standards of DMLW's Survey Section prior to lease issuance. If the submitted survey is accepted by DMLW, the measurements identified will be used to accurately calculate the total acreage. The survey must be performed by an Alaskan registered Land Surveyor under survey instructions issued by the DMLW Land Survey Section. The applicant is responsible for the cost of the survey. The applicant shall submit an initial draft of the survey at least one year prior to the expiration of the EA.

Easement: 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 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. The applicant is required to submit a preliminary draft as-built survey a minimum of one year prior to the expiration of the entry authorization to allow adequate time for DMLW's review and approval of a final as-built survey.

### **Entry Authorization (EA)**

DMLW proposes to authorize the applicant entry onto state land through the issuance of an EA while they are completing the required development, survey, and appraisal. The term of the EA will be for a term of five years. The proposed EA would be issued after the FFD goes into effect. The term of the EA is included in the term of the lease and easement.

### **Compensation and Appraisal**

#### Lease Compensation

A Minimum Rent Determination for the proposed leasehold determined that an appraisal is needed for this lease. In accordance with AS 38.05.840, state-owned land may only be leased if it has been



appraised within two years before lease issuance. The applicant will be required to provide an appraisal of the proposed leasehold before the lease is issued. Once the appraisal has been approved by DMLW, the annual lease fee will be set at the fair market value (FMV) of the proposed leasehold. Furthermore, in accordance with AS 38.05.105, the proposed EA and Lease will be subject to reappraisal at five-year intervals after the issuance of the proposed authorization.

Coordination with the DMLW Appraisals Section indicates Fair Market Value rental likely exceeds the minimum rent of \$1,000 per lease, and thus an appraisal will be required. During the term of the Entry Authorization, the applicant will pay an interim amount of \$1,000 for each of the maximum 70 parcels requested by the applicant for a total of \$70,000. After appraisal, any overages will be credited to the applicant's account, and any shortfalls must be paid prior to lease issuance.

#### Easement Compensation

Prior to issuance of the final easement, the applicant shall pay a one-time Public Access Easement fee of \$120 per acre or fraction thereof, as calculated on the approved as-built survey. These fees may be adjusted if regulations pertaining to the fees change during the term of the entry authorization and/or easement, and will be subject to non-sufficient fund and late payment penalty fees. Additionally, the applicant shall pay applicable document recording fees prior to DMLW's execution and recordation of the easement document.

During the EA term, there is an annual fee. This fee is \$120 per acre or fraction thereof, with a \$240 minimum, set by 11 AAC 05.070 (d)(2)(I). The application estimated an easement length of 22.5 miles, and specified a width of 100 feet. This yields an acreage of 273 acres which, when multiplied by \$120, equals \$32,760. This fee is charged concurrently with the lease fee as well as any other land use fees that may be described herein.

#### **Subleases**

Subleasing may be permissible through AS 38.05.095, if the proposed lease is approved. All potential subleases must first be approved in writing by DMLW. DMLW may conduct further agency review and/or public notice before making a determination on the appropriateness of the proposed sublease. The sublease fee will not be less than 25% of the annual fee paid to the lessee by the sublessee. All subleases must comply with local platting requirements.

#### **Assignment**

The proposed lease, if issued, may be assigned to another individual or corporation only with written approval from the State of Alaska. A lease will not be assigned to an entity if that entity does not meet the statutory requirements of the lease, or if the lessee is considered not to be in "good standing" with this or any other agency authorization.

#### **Reclamation**

In accordance with AS 38.05.090, the leasehold must be restored to a "good and marketable condition" within 120 days after termination of the lease. Please see the discussion section for additional information of the proposed rehabilitation standard.

**Public Notice**

Pursuant to AS 38.05.945, this PD will be advertised for a 45-day public comment period, starting on December 15, 2023. In addition, the following post offices located near the proposed leasehold will be requested to post the notice pursuant to AS 38.05.945(b)(3)(C): the post office at 501 Village Road, Ester, AK 99725, and the post office at 755 Fairbanks St, Fairbanks, AK 99709. The notice will also be posted on the State of Alaska Online Public Notice website pursuant to AS 38.05.945(b)(3)(B) located at: <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx>.

Notice will also be distributed directly to the applicant, agencies who commented during the Agency Review period, as well as the following individuals or entities:

Casandra Clolane Rudy	Kerry and Stephen Platzke	Carol P. Kastelic Trust
Carla Helffrich	Henry Dyer Tiffany III	Hudson Crew Trust
Carla J. and David Henry Nyquist	William E. Shiels	Joy Sykes
Grant Matheke	Frontier International Land Corp.	Michael A. Dagon
Pack Gail	Alaska Gasline Development Corporation	Jim Sackett
Kenneth Barrick	Oralee Nudson	Fairbanks North Star Borough
Seth De Ya Ah Corporation	Toghotthele Corporation	Doyon Limited
Tim Berg	Doug Loshbaugh	Maxwell Plichta

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

To be eligible to appeal, a person affected by the FFD must provide written comments during the public comment period per AS 38.05.035(i) and 11 AAC 02.015.

**Written comments about this project must be received in this office no later than 5:00 PM AKST on January 29, 2024 to be considered.**

To submit comments please choose one of the following methods:

Email: [nro.lands@alaska.gov](mailto:nro.lands@alaska.gov)  
Mail: Department of Natural Resources  
Division of Mining, Land and Water  
Northern Regional Land Office  
ATTN: *AJ Wait*  
3700 Airport Way  
Fairbanks, AK 99709  
Fax: (907) 451-2751

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

*Signature page follows.*

**Recommendation**

DMLW has completed a review of the information provided by the applicant, examined the relevant land management documents, agency comments, and land ownership, and has found that this project is consistent with all applicable statutes and regulations. DMLW considered both direct and indirect benefits to the State. As there are no competing projects which are incompatible with the proposed lease and in consideration of the benefits described above, DNR finds granting of the proposed authorizations provide the greatest benefit to the State.

I find the proposed action may be in the State’s best interest and recommend approval to proceed with public notice.

*AJ Wait* 12/15/23  
AJ Wait, Natural Resource Manager 2 Date

**Preliminary Decision**

It is the determination of the Division of Mining, Land and Water that it may be in the State’s best interest to issue a negotiated lease for 40-years and a public easement to the applicant, as described above. The issuance of this lease and easement support the production of local energy which provides a benefit to the local community and the state. This application shall now proceed to public notice.

*Jeanne Pigors* 12/15/23  
Jeanne Pigors, Regional Manager Date  
Northern Regional Land Office, Division of Mining, Land and Water

**Attachments**

- Attachment A – Development Plan (dated November 13, 2023)
- Attachment B – Draft Entry Authorization
- Attachment C – Draft Lease Agreement and Additional Stipulations
- Attachment D – Draft Easement

