

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

Regional Manager's Decision

ADL 234261

Homer Electric Association
Public Utility Easement

REQUESTED ACTION

On September 15, 2023, the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Regional Land Office (SCRO), received an application for an easement from Homer Electric Association (HEA; the applicant) for a proposed utility line on State-owned, DMLW-managed uplands near Anchor Point, Alaska. The purpose of the proposed easement is to provide electricity to local landowners. The applicant has requested a public utility easement approximately 200 feet long, 30 feet wide, and 0.14 acres in size, for an indefinite term.

RECOMMENDED ACTION

DNR DMLW SCRO recommends the authorization of a public utility easement to HEA, adjusted in length to align with the area managed by DMLW.

The request shall be modified, and this easement be authorized as follows:

- Type of easement: Public Utility Easement
- Length: change from approximately 200 feet to approximately 100 feet
- Width: 30 feet
- Acreage: change from 0.14 to 0.069
- Term: Indefinite
- Grantee: Homer Electric Association

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 2000 Kenai Area Plan (KAP) and other classification references described herein, and the casefile for the application serialized by DNR as ADL 234261.

LOCATION INFORMATION**Geographic Location**

Anchor Point, Alaska

Meridian Township Range Section

Within the W1/2 of the NW1/4 of the SW1/4 of the SE1/4 of Section 14, Township 5 South, Range 15 West, Seward Meridian

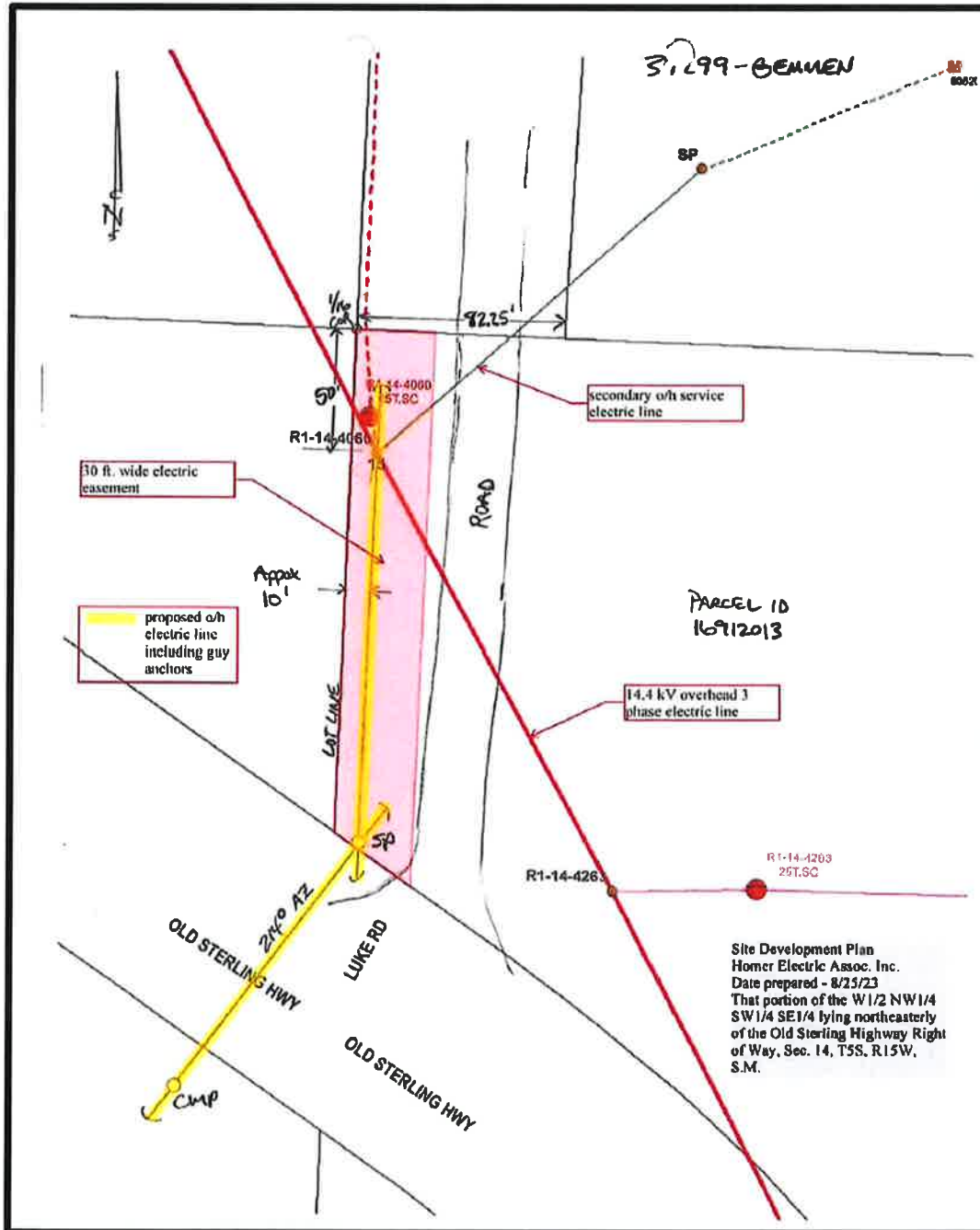


Figure 1 – An applicant-provided depiction of the proposed electrical line easement

TITLE

The State of Alaska holds title to applicable portions of lands within Sections 14 of Township 5 South, Range 15 West, Seward Meridian, Alaska, per Patent Number 1235379 recorded at the Homer Recorders Office. The associated DNR land acquisition casefile is GS 107.

THIRD PARTY INTERESTS

The applicant has requested an easement that may impact on the following interests. Public notice has been sent to all interest holders noted below.

- ADL 64621, Public Access Easement, DNR DMLW

PLANNING & CLASSIFICATION

The proposed easement area is located within the Kenai Area Plan (KAP), adopted January 2000, Region 7: Homer (including Ninilchik River, Deep Creek, and Anchor River drainages), Unit 237 Old Sterling Highway wetlands along Cook Inlet Bluff.

This unit is classified as Resource Management Land and the designation is Resource Management – high value.

In reviewing chapter 2 General land use and Transportation and Utilities management guidelines, as well as chapter 3 Summary of Resources and Uses in the Region, the proposed authorization, ADL 234261, for a utility line does not conflict with the Plan.

ACCESS

Functional legal access to the state land exists via Old Sterling Highway.

PUBLIC NOTICE & AGENCY REVIEW

Public Notice Summary

Public notice of the application was conducted from March 13, 2024, to April 12, 2024. The notice was posted to the State of Alaska Online Public Notice System and was sent to the Anchor Point, Homer, and Ninilchik Post Offices for display on their notice boards. The notice was also sent to the adjacent landowners and Native Corporations.

No comments were received during the public notice period.

Agency Review Summary

Agency review of the application was conducted from March 13, 2024, to April 12, 2024. The notice was sent to the following recipients.

State Agencies

- DNR DMLW Survey Section
- DNR DMLW Land Conveyance Section (LCS)
- DNR DMLW Realty Section
- DNR DMLW Mining Section
- DNR DMLW Water Section
- DNR DMLW Statewide Abatement of Impaired Land (SAIL)
- DNR Division of Parks and Outdoor Recreation (DPOR)
- DNR DPOR Office of History and Archaeology (OHA)

- DNR Division of Forestry and Fire Protection
- DNR Division of Oil and Gas, State Pipeline Coordinator's Section
- DNR Division of Oil and Gas
- Soil and Water Conservation District, Kenai District
- Mental Health Trust Land Office
- Department of Environmental Conservation (DEC), Division of Environmental Health, Drinking Water Program
- DEC Division of Environmental Health, Solid Waste Program
- DEC Division of Spill Prevention and Response
- DEC Division of Water; Wastewater, Alaska Pollutant Discharge Elimination System Program
- DEC Division of Water
- Alaska Department of Fish and Game (ADF&G), Habitat Section
- ADF&G Wildlife Conservation, Access Defense Program
- Division of Commerce, Community, and Economic Development, Division of Community and Regional Affairs, Local Government Assistance

Federal Agencies

- US Army Corps of Engineers

Local Agencies

- Kenai Peninsula Borough Planning Department
- Kenai River Center

A total of 4 comments were received during the agency review and are summarized below:

Agency Review Comment & Response

Comment: On March 13, 2024, LCS submitted a comment of non-objection.

Response: SCRO acknowledges the non-objection.

Comment: On March 15, 2024, the DNR DPOR Alaska State Historic Preservation Office acknowledged the agency review and stated they would contact our office if additional information was required. No additional information was requested during the review period.

Response: SCRO acknowledges the comment.

Comment: On April 11, 2024, the DEC Division of Spill Prevention and Response submitted a non-objection and provided the following information: "Based on the information provided, the Alaska Department of Environmental Conservation (DEC), Contaminated Sites Program (CSP) has no comments related to this information request. If the scope of the project changes, update your research and contact CSP as needed. Please note that residual contamination may remain at cleanup completed sites, and those sites should also be evaluated."

Spills or releases to soil and water are also managed by the DEC Prevention Preparedness and Response Program (PPRP) and are not captured in the CSP database or map. Information about spills can be found in the PPRP SPILLS database at <https://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillSearch>. For more information about spill responses contact the appropriate regional response team office <https://dec.alaska.gov/spar/ppr/spill-information/reporting/>.”

Response: SCRO acknowledges the comment and provided this information to the applicant.

Comment: On April 11, 2024, ADF&G, Access Defense Program submitted a non-objection and provided the following information:

1. The project area intersects with a North American Breeding Bird Survey (BBS) zone a key source of bird population data. Among the 60+ bird species found nearby are several Species of Greatest Conservation Need (SGCN) identified in the 2015 Alaska Wildlife Action Plan^c. These species are culturally, ecologically, economically important, or serve as indicators of environmental change. Preserving trees and shrubs while meeting project goals is important to safeguard habitat and sustain bird populations. Scheduling vegetation clearing before or after the breeding season is advisable. See <https://www.fws.gov/alaska-bird-nesting-season> for details.
2. Project activities may affect ESA-listed species and other sensitive resources, such as migratory birds, managed by the U.S. Fish and Wildlife Service (USFWS). We recommend utilizing the Information for Planning and Consultation (IPaC) tool (<https://ipac.ecosphere.fws.gov/>) to determine what USFWS trust resources may be present in the project boundary, including determining the probability of presence during project activities. For further details, contact the Southern Alaska Fish & Wildlife Field Office at 907-271-2888 (phone) or 907-271-2786 (fax).

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

ENVIRONMENTAL CONSIDERATIONS

It is recommended 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. Additionally, no fuel or other hazardous materials should be authorized to be stored on site.

ECONOMIC BENEFIT & DEVELOPMENT OF STATE RESOURCES

DMLW assesses the economic benefits of the proposed authorization and whether it encourages the development of the State's resources. This authorization will provide a direct economic benefit to the state in the form of land use fees. Additionally, the proposed easement facilitates the expansion of the public utility system which will promote conditions for economic development, thus providing an indirect benefit to the state. There are no known competing projects for use of these lands, therefore issuance of this easement provides for the greatest economic benefit to the State and is consistent with the legislative intent expressed in AS 38.05.850.

DISCUSSION

On April 30, 2024, the Department of Transportation and Public Facilities (DOT&PF) Central Region informed our office that HEA's request partially falls within the 300-foot existing right-of-way (ROW) for Old Sterling Highway. As such, the footprint of the proposed easement has been revised to the applicants estimate of length to align with the existing ROW.

The applicant applied to install a utility on state land subject to a 300-foot ROW by DOT&PF. Per the 1994 Cooperative Management Agreement between DNR and DOT&PF, DOT&PF is responsible for the management of highway ROWs. Therefore, HEA has been informed to coordinate with DOT&PF for authorization inside ROW.

SCRO further recommends that the easement be granted for an indefinite term from the effective date of this decision as the need for this easement for an aerial transmission line, can be expected to exist as long as the adjoining land requires electric utility services.

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. The applicant would be required to submit a performance guaranty in the amount of \$6,600.00 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

The applicant will 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 Entry Authorization (EA) for ADL 234261. The applicant will be responsible for maintaining the necessary insurance during the term of the EA. 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 EA.

SURVEY

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 is 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

- The applicant shall pay an annual interim land use fee of \$120.00 per acre rounded up to the nearest acre, with a \$240.00 minimum, totaling \$240.00, per 11 AAC 05.070(d)(2)(I) and Director's Fee Order No. 3 for the term of this EA.
- The applicant shall pay a one-time fee of \$0.56 per linear foot for a public easement for a utility per 11 AAC 05.070(d)(2)(C) and 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 applicant shall pay a fee of \$50.00 for any late payment during the term of the Entry Authorization, and applicable document recording fees prior to DMLW's execution and recordation of the easement document.

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. All fees shall accrue from the effective date of the decision.

ENTRY AUTHORIZATION

An entry authorization shall be issued for a term ending 3 years from the effective date of this decision for the purpose of constructing, surveying, operating, and maintaining the infrastructure considered prior to DMLW's issuance of a public utility easement. The entry authorization may be revoked if the applicant has not submitted DMLW with a draft as-built survey one year prior to the expiration of the entry authorization. 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 should contact DMLW at least 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 request for survey instructions to the DMLW Survey Section
- 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, it is my recommendation that an easement is issued as described above, on the condition that all stipulations are followed as described in the attached authorization.

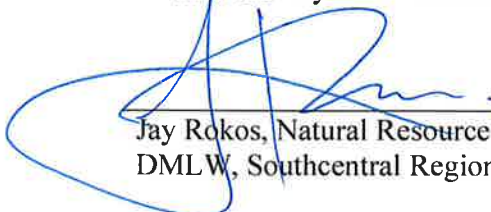
Savannah Lilyhorn
Savannah Lilyhorn, Natural Resource 1
DMLW, Southcentral Regional Land Office

07/01/2024
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.


Jay Rokos, Natural Resource Manager 1
DMLW, Southcentral Regional Land Office

7/1/2024
Date

ATTACHMENTS

- Entry authorization, unsigned
- Draft 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)(1)(F), which has been set at \$200.00 under the provisions of 11 AAC 05.160(a)-(b). A copy of 11 AAC 02 is available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.