

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
Northern Regional Land Office

Regional Manager's Decision

ADL 421711

Amendment 1

Alaska Department of Transportation and Public Facilities

Public Access Easement

AS 38.05.850

REQUESTED ACTION

On July 11, 2024, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Northern Regional Land Office, received an amendment request for the location and configuration of ADL 421711. The southern route would be dropped entirely, and the northern route would be reconfigured as depicted on Attachment A. Additionally the width would be increased to 100 feet. The total length of the easement would be reduced from approximately 11,750 feet to approximately 2,600 feet, and the total acreage from approximately 13.5 acres to approximately 6 acres.

RECOMMENDED ACTION

DMLW recommends amending the easement location as requested.

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.

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 here-in, the 2015 Eastern Tanana Area Plan (ETAP) and other classification references described herein, and the casefile for the application serialized by DNR as ADL 421711.

LOCATION INFORMATION

Geographic Location

The applicant has requested that DMLW authorize an easement on the east side of the Alaska Highway near milepost 1250.

Township Range

The applicant has applied to use State-owned, DMLW-managed lands within Sections 18 and 19 of Township 13 North, Range 21 East, Copper River Meridian, and depicted on Attachment A.

Other Land Information

Borough/Municipality: The site is located within the Unorganized Borough.
Regional Corporation: Doyon Limited.

TITLE

The State of Alaska received title to lands within Sections 18 and 19 of Township 13 North, Range 21 East, Copper River Meridian, Alaska, under DNR casefile GS 937.

Title to Section 18 was received on October 8, 1985, under patent number 50-86-0019. Title to Section 19 was received on September 13, 2018, under patent number 50-86-0019.

Both patents reserved a right-of-way for ditches and canals under the authority of the United States. The patent for Section 19 also reserved an easement and right-of-way for open wire and underground communication lines.

THIRD PARTY INTERESTS

This amendment would not impact any additional third party interests.

PLANNING & CLASSIFICATION

Under the ETAP, the subject lands are designated as Resource Management lands, and fall within unit U-44 of the plan. The management intent for lands designated Resource Management indicates that projects that provide a public benefit, specifically roads, transmission lines, and the like, may be authorized. (ETAP 3-11). "Other projects may be authorized, if determined to be in the best interest of the state." (ETAP 3-11). Lands within unit U-44 are to be managed for multiple uses. (ETAP 3-135). Consistent with Resource Management designated lands, the management intent for this unit provides development is generally appropriate for certain utilities, communication facilities, roads and similar projects that provide a general public benefit. (ETAP 3-135). Development of lands within this unit must be carefully considered for its impact on caribou and moose wintering areas. (ETAP 3-135).

The proposed easement creates public access to a designated material site. DOT is applying to facilitate access so it can operate under an existing material sale contract which will support road development and maintenance. The proposed easement overlaps in substantial part with existing trails in the area to minimize disturbances in developing access. In addition, no habitat concerns

were received from Alaska Department of Fish & Game (ADF&G). Considering these factors, this easement is consistent with the management intent of the ETAP.

ACCESS

Legal and physical access to the proposed public access easement is via the Alaska Highway at milepost 1250.

BACKGROUND

On August 27, 2021, DMLW received an application from DOT for a public easement for approximately 13.4 acres of land to develop existing trails into functional roads to access the designated material site ADL 419500, DOT MS 62-1-168-2, which did not have legal access. The applicant requested an indefinite term for this easement.

The instant easement was issued to provide access to material site ADL 419500, DOT MS 62-1-168-2. This material site was originally a federal authorization (F-39281). The routes applied for under ADL 421711 were the original routes utilized to access the site. While it was known the routes were steep, the precise topography and road construction design plans were not available at time of application. Unfortunately, the existing routes are too steep for the larger modern equipment and ensuring compliance with current SWPP requirements would be challenging. The proposed amended easement is requested to support material extraction from the above referenced material site beginning in summer of 2024.

PUBLIC NOTICE & AGENCY REVIEW

Given the de minimis nature of the requested change, application notice and agency review were not conducted. Notice of the decision will be posted to the State of Alaska Public Notice website for 20 days.

ENVIRONMENTAL CONSIDERATIONS

Environmental considerations are unchanged from the original easement decision. This decision considers the environmental factors directly related to the authorization for use of State lands, specifically whether the approval of 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 or not to approve the authorization.

Environmental contamination risk associated with this proposed easement is minimal. Fuel, lubricants, and other hazardous materials will be restricted to those necessary and will be contained within vehicles and vegetation clearing equipment when such equipment is necessary for right-of-way maintenance. No fuel or other hazardous materials will be stored on site. There are no other known environmental considerations or constraints in this location. The applicant is ultimately responsible for determination of site suitability.

ECONOMIC BENEFIT & DEVELOPMENT OF STATE RESOURCES

In accordance with AS 38.05.850, DMLW considers if the requested authorization will provide the greatest economic benefit to the State and development of its natural resources. Specifically, staff assess both direct and indirect economic benefits and whether the proposed authorization encourages the development of the State's resources.

The proposed easement will facilitate DOT's use of a designated material site for road construction and maintenance. This will promote public safety and transportation. Additionally, the proposed easement will also provide public access to state resources in the area, including material sales to both DOT and other members of the public which will provide economic benefit to the State.

In consideration of these factors, and because there are no competing requests for authorization, approval of this easement will provide the greatest economic benefit to the State.

DISCUSSION

The proposed easement amendment is sought by DOT to provide legal and physical access to an existing material site located at milepost 1250 of the Alaska Highway. Issuance of the proposed easement amendment is necessary for material sales to issue from this site. By facilitating development of a material source which has already been designated for sales, this will encourage use of this established sites and avoid inefficient or duplicative development of material sources on state land. Development of the proposed easement is planned to overlay existing trails to minimize unnecessary disturbance to state land.

DOT has requested the proposed easement be issued for an indefinite term. Based upon the information provided by the applicant as well as review of the relevant planning documents, comments from agency review, and review of applicable statutes, regulations, and environmental and economic considerations related to this application, DMLW finds that the proposed easement for an indefinite term is in the best interest of the State.

Following termination, whether by abandonment, revocation, or any other means, the applicant shall rehabilitate the easement to a condition that is acceptable to DMLW.

PERFORMANCE GUARANTY

In consideration of the low risk associated with the proposed authorization, the applicant's known history of compliance, and that the applicant is a state agency, staff recommend that a performance guaranty not be required at this time. DMLW reserves the right to require a performance guaranty during the terms of either the entry authorization and/or the final easement.

INSURANCE

Staff recommend that insurance not be required as the applicant is self-insured. Staff recommend that the applicant be required to provide proof of its contractor's insurance upon DMLW's request.

SURVEY

A DMLW-approved as-built survey, or other recordation approved by DMLW, is required to determine the proper location and acreage of installed improvements and the associated easement on state-owned, DMLW-managed lands. A final easement will not be issued until the as-built survey, or other DMLW-approved recordation, has been approved by DMLW. If an alternate recordation is not approved, the applicant is required to submit a preliminary draft as-built survey – 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 minimum of one year prior to the expiration of the EA to allow adequate time for DMLW’s review and approval of a final as-built survey.

FEES

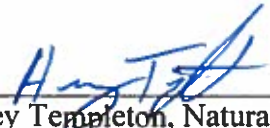
Per 11 AAC 05.020(b), staff recommend that interim and one-time issuance fee(s) for this authorization are waived as the request is in the public interest. Staff further recommend that the easement document be sent to the Recorder “State Business - No Charge” as the applicant is a state agency.

ENTRY AUTHORIZATION

The entry authorization is an interim authorization issued when a survey is necessary prior to easement issuance. Staff recommend that an entry authorization be issued for a term ending five years from the date of issuance for the purpose of constructing, surveying, operating, and maintaining the infrastructure considered herein prior to DMLW’s issuance of a public access easement. 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.

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 the recommendation of staff to issue an easement as described above, on the condition that all stipulations are followed as described in the attached authorization.



Harvey Templeton, Natural Resource Manager
DMLW Northern Regional Lands Office

7/12/24


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 21st calendar day after signature.



Dianna Leinberger, Acting Regional Manager
DMLW, Northern Regional Lands Office

7/12/24

Date

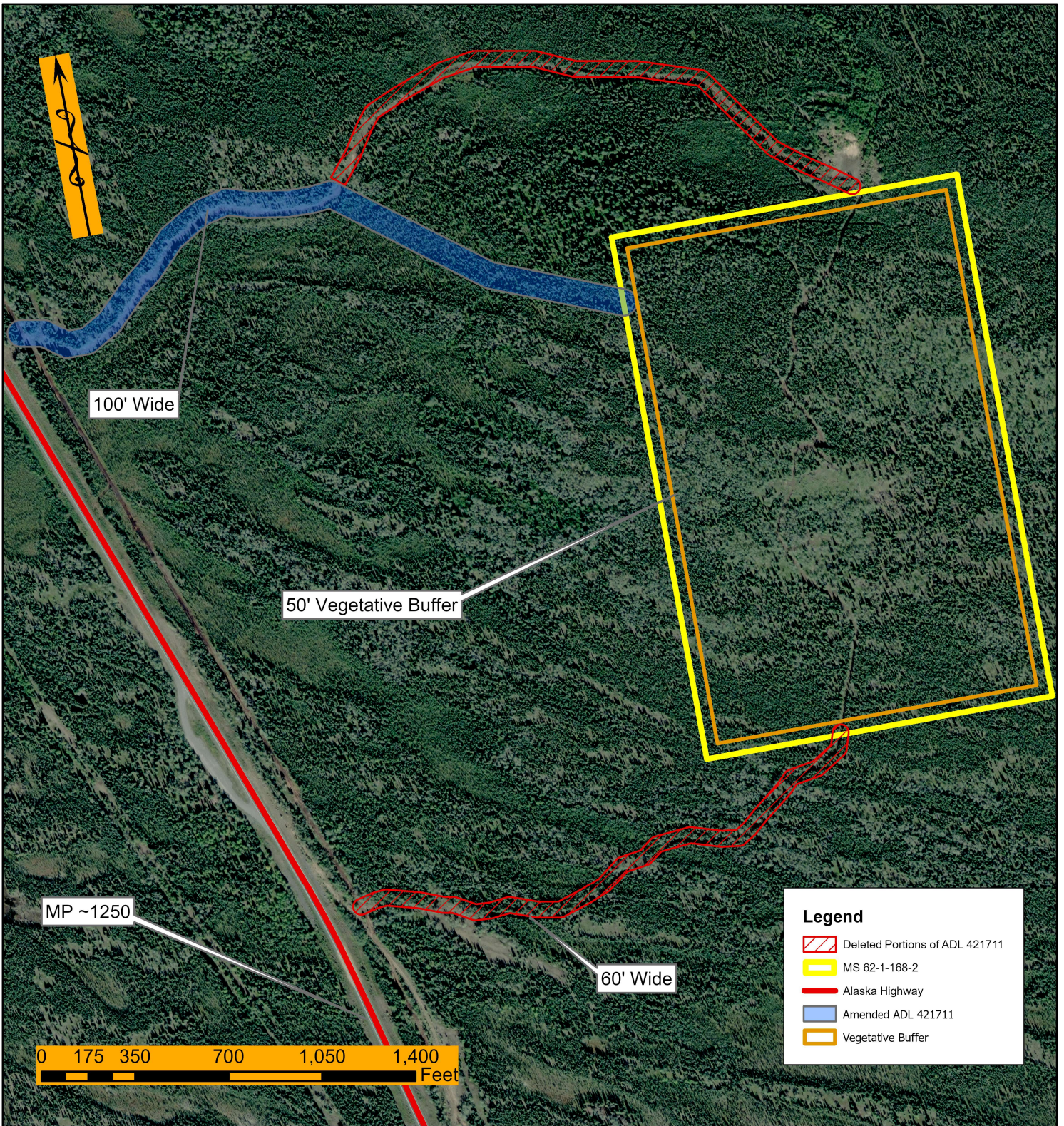
ATTACHMENTS

- Draft entry authorization
- 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 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>.



M.S. 62-1-168-2

T13N, R21E CRM

Section 19: Within the SW1/4NE1/4, S1/2NW14NE1/4

STATE OF ALASKA
 DEPARTMENT OF TRANSPORTATION
 AND PUBLIC FACILITIES

MATERIAL SITE PLAN

M.S. 62-1-168-2

NORTHERN REGION

Date: 7/12/2024

SCALE NTS
 DRAWN BY: KAW

~ 60 acres