

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

Regional Manager's Decision

ADL 234142

Matanuska Electric Association, Inc.
Public Utility Easement

REQUESTED ACTION

On December 2, 2022, 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 Matanuska Electric Association (MEA), the applicant, for a requested installation of electric utility lines on State-owned, DMLW-managed submerged lands near Big Lake, Alaska. The purpose of the proposed easement is to provide utility connections to service recipients around Crooked Lake. On February 16, 2023, a second application, originally serialized as ADL 234163 was submitted for an extension of the same utility lines in Crooked Lake. ADL 234163 was merged with ADL 234142. The requested public utility easement totals approximately 5,580 feet long, 20 feet wide, and 2.5 acres in size.

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: 5,580 feet
- Width: change from 20 feet to 30 feet
- Acreage: change from 2.5 acres to 3.8 acres
- Term: Indefinite
- Grantee: Matanuska Electric Association, Inc

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 2008 Southeast Seward Area Plan and other classification references described herein, and the casefile for the application serialized by DNR as ADL 234142.

LOCATION INFORMATION

Geographic Location

The applicant has requested that DMLW authorize an easement within Crooked Lake, near Big Lake, AK.

Meridian Township Range Section

The applicant has applied to use State-owned, DMLW-managed lands within Sections 31 and 32, Township 17 North, Range 4 West, Seward Meridian.

FIGURE 1 – A map that depicts the area and proposed easement in yellow.



TITLE

The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying Crooked Lake in the section(s) referenced above, on the basis of the Equal Footing Doctrine, the Submerged Lands Act of 1953, and AS 38.04.062 (Identification of State Submerged Lands).

PLANNING & CLASSIFICATION

The proposed easement is located within the 2008 Southeast Susitna Area Plan (SSAP), and Crooked Lake falls within the General Use category per Chapter 3's Rivers and Navigable Lakes section. The section describes management intent as follows "... to allow a diversity of uses to be consistent with the uses authorized on the adjoining uplands in federal, private or other state entity ownership..." (Pg 3-73.) The adjoining uplands are used for settlement and the public utility easement will serve to benefit residents therefore the activity is consistent with the area plan.

ACCESS

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

PUBLIC NOTICE & AGENCY REVIEW

Public Notice Summary

Public notice of the application was conducted from May 5, 2023, to June 5, 2023. The notice was posted to the State of Alaska Online Public Notice System and was sent to the Wasilla, Wasilla Annex, and Houston post offices for display on their notice boards. The notice was also sent to the following recipients:

Regional Corporations

- Cook Inlet Region, Incorporated

Adjacent Landowners

- Teresa and Christopher Wagar
- James Hester
- Tod and Nikki Boozer
- Jeffery and Erica Arnold
- Steve and Susan Elwell
- Robb & Erin Donohue Boyer
- Raymond Plummer
- John and Lisa Bulkow
- Chrystopher and Kimberly Fleming
- James and Katherine O'Neill
- Chas Norton
- Nicholas Leiser
- Jill and Eric Follett
- Dennis and Barbara Kendall
- Leroy Ganschow
- William and Brenda Applegate
- Beverly and James Coats
- John and Caroline Rodgers

One comment was received during the public review and is summarized below:

Public Notice Comment & Response

Comment: A comment was received with questions regarding if vegetation will be cut down, how large the trench would be, and how long the activities would last within the commentor's property or adjacent areas, and if the activities will be loud.

Response: As most of the questions are regarding the uplands and the uplands are in private ownership and are outside of the scope of SCRO's decision. MEA did provide responses to the questions as follows. Small areas of trees and vegetation will be cleared around transformers and meter bases; the cable will be laid at the bottom of the lake but where trenching will occur it will be approximately 2' wide for 15' to 20' in length; construction activity will last 3 to 7 days; there will be typical construction noise during this time.

No other comments were received.

Agency Review Summary

Agency review of the application was conducted from May 5, 2023, to June 5, 2023. The notice was sent to the following recipients:

Federal Agencies

- United States Army Corp of Engineers

State Agencies

- DNR DMLW; Survey Section, Land Conveyance Section (LCS), Realty Services Section, Mining Section, Water Section, Statewide Abatement of Impaired Lands
- DNR Division of Parks and Outdoor Recreation (DPOR); State Historic Preservation Office
- DNR Division of Forestry & Fire Protection
- DNR Division of Oil and Gas (DOG); State Pipeline Coordinators Section, Permitting
- Wasilla Soil and Water Conservation District
- DNR Mental Health Trust Land Office
- Department of Transportation and Public Facilities (DOT&PF) Statewide Right-of-Way Section (ROW)
- Department of Environmental Conservation (DEC); Division of Environmental Health, Drinking Water Program, Solid Waste Program
- DEC Division of Spill Prevention; Contaminated Sites Program
- DEC Division of Water; Alaska Pollutant Discharge Elimination System
- Alaska Department of Fish & Game (ADF&G); Division of Habitat, Access Defense Program
- Department of Commerce Community and Economic Development, Division of Community and Regional Affairs, Local Government Affairs

Local Agencies

- Matanuska Susitna Borough, Planning
- Big Lake Community Council

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

Agency Review Comment & Response

Comment: ADF&G Access Defense Program submitted a comment of non-objection and made note that the applicant holds two fish habitat permits for the utility work that is requested in the lake. The fish habitat permits are serialized as FH23-IV-0064 and FH23-IV-0065.

Response: SCRO acknowledges this response.

Comment: DEC Drinking Water Program provided a comment stating that the requested easement is not near an active registered Public Water Source.

Response: SCRO acknowledges this response.

Comment: DOT&PF Statewide Right-of-Way noted that they had no comments at this time.

Response: SCRO acknowledges this response.

Comment: DNR LCS provided a comment of non-objection.

Response: SCRO acknowledges this response.

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.

PERFORMANCE GUARANTY

A performance guaranty is intended to incentivize compliance with the terms and conditions of the entry authorization. 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 \$9,200.00 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 234142. 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 has already requested 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 \$480.00, 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 issuance fee of \$0.56 per linear foot 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.

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.

The Grantee shall pay a fee for any late payment. The amount \$50.00 will be assessed on each past-due payment until paid in full.

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

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 herein 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.
- Insurance.
- A performance guaranty.

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 issuance.



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

7/17/2024

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)(6), which has been set at \$200.00 under the provisions of 11 AAC 05.160 (a)-(b). A .pdf or print copy of 11 AAC 02 may be obtained by contacting DNR's Appeals Program via phone at (907) 269-3565, via email at dnr.appeals@alaska.gov, and is also available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.