

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

Regional Manager's Decision

ADL 234177

Matanuska Electric Association, Inc
Public Utility Easement

REQUESTED ACTION

On March 29, 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 Matanuska Electric Association, Inc (MEA; the applicant) for a proposed utility line on State-owned, DMLW-managed submerged lands near Palmer, Alaska. The purpose of the proposed easement is to provide electricity to local landowners. The applicant has requested a public utility easement approximately 700 feet long, 20 feet wide, and 0.321 acres in size.

RECOMMENDED ACTION

SCRO recommends the authorization of a public utility easement to MEA with the following parameters:

- Type of easement: Public utility easement
- Length: 700 feet
- Width: 20 feet
- Acreage: 0.321
- 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 2011 Susitna Matanuska Area Plan and other classification references described herein, and the casefile for the application serialized by DNR as ADL 234177.

LOCATION INFORMATION**Geographic Location**

Seventeen Mile Lake, Palmer, Alaska

Meridian Township Range Section

The applicant has applied to use State-owned, DMLW-managed lands within Section 19, Township 19 North, Range 3 East, Seward Meridian.

Site Development Diagram

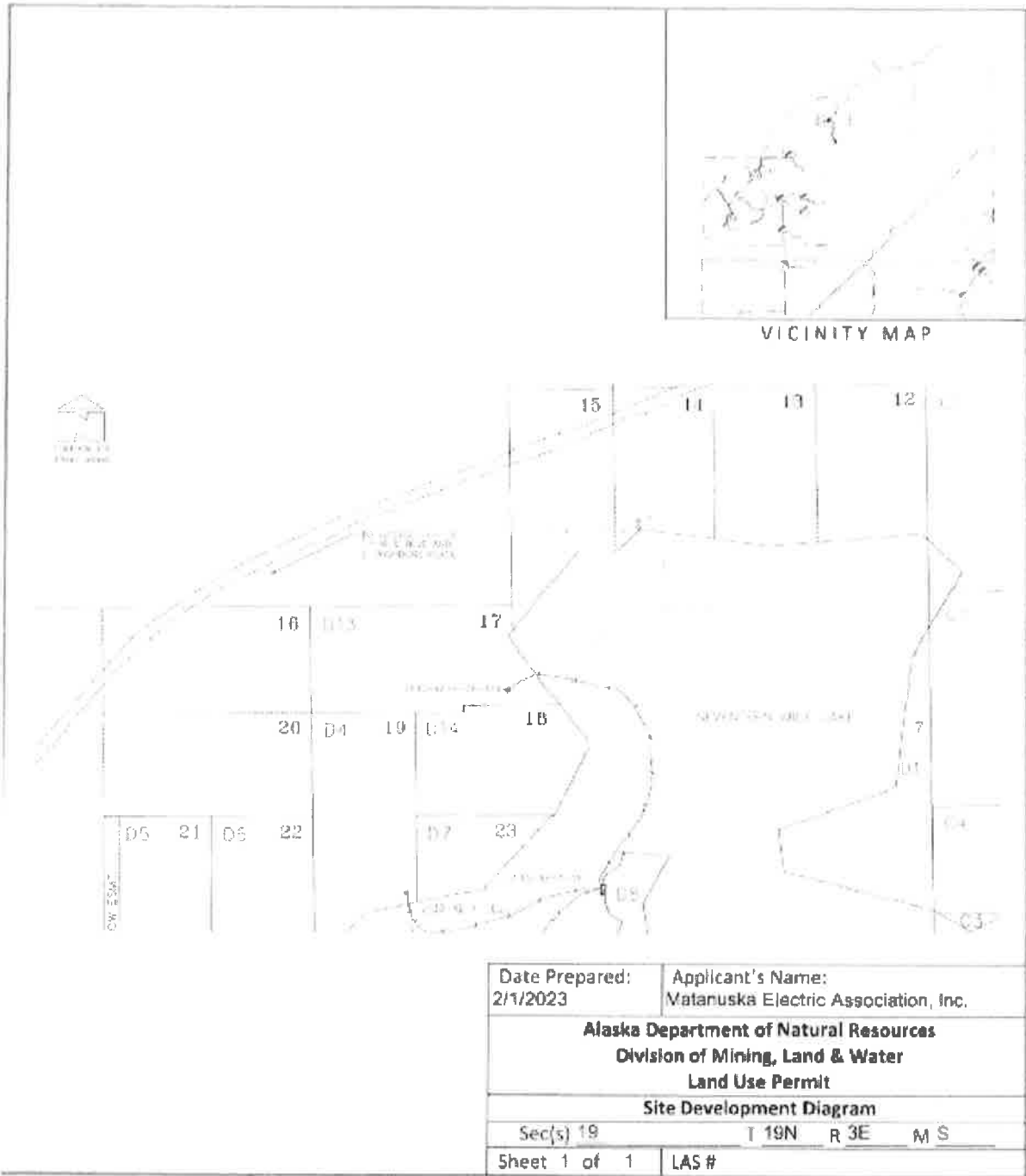


FIGURE 1 – An applicant-provided depiction of the proposed electrical line easement.

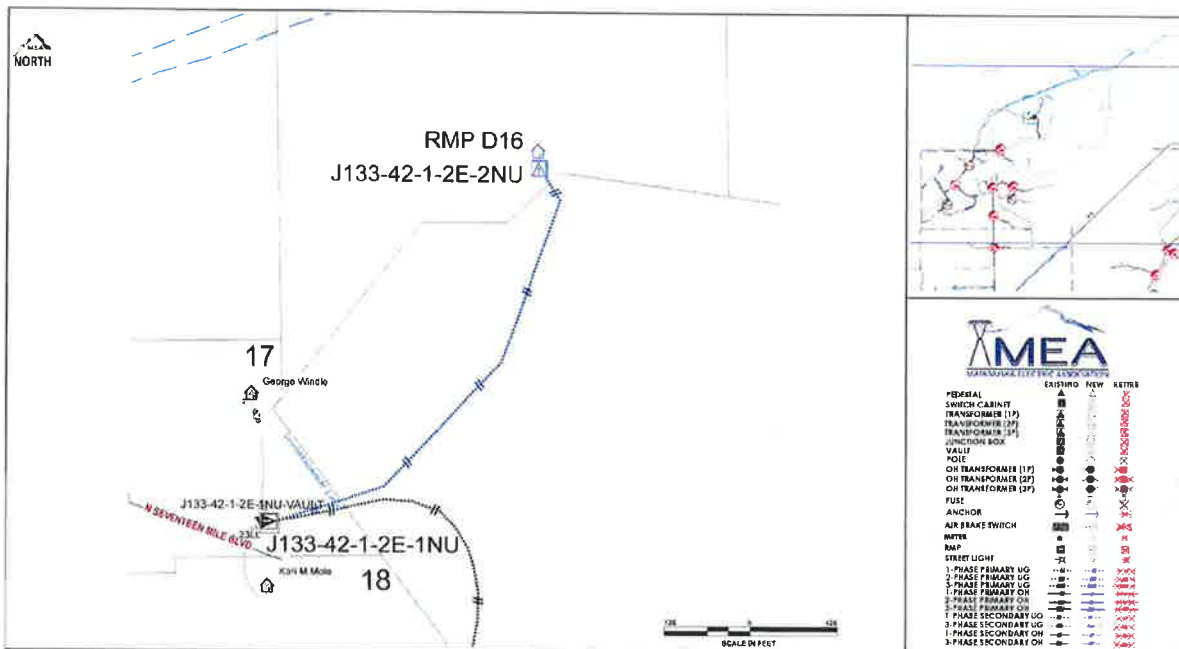


FIGURE 2 – Close up of an applicant-provided depiction of the proposed electrical line easement.

TITLE

The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying Seventeen Mile 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).

THIRD PARTY INTERESTS

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

- ADL 227780, Public Utility, Matanuska Telephone Association

PLANNING & CLASSIFICATION

The proposed easement area is located within the Susitna Matanuska Area Plan (SMAP), adopted August 2011, Unit L-05. Unit L-05 is designated as Habitat (ha) and Coal (co) which converts to classifications of Wildlife Habitat Land and Coal Land, respectively.

The Land Use Designation for habitat highlights the importance of the area for fish and wildlife species. The guidelines state that utilities and roads may be appropriate with appropriate design if habitat functions can be maintained. Alaska Department of Fish & Game stated no objection to the issuance of this easement. Additionally, there are no apparent land use conflicts between potential coal extraction and placement of a power transmission cable on the bed of Seventeen Mile Lake.

The management intent of Unit L-05 notes that the lands are to be managed consistent with the legislative purposes described in AS 16.20.340 and the 1986 Matanuska Valley Moose Range Management Plan. As outlined by AS 16.20.340, the primary purpose of the Matanuska Valley

Moose Range is to “maintain, improve, and enhance moose populations and habitat and other wildlife resources of the area, and to perpetuate public multiple use of the area, including fishing, grazing, forest management, hunting, trapping, mineral and coal entry and development, and other forms of public use of public land not incompatible with the purpose stated in this section”. While the Matanuska Valley Moose Range Plan notes that lakes 100 acres or greater in size should have a buffer of undisturbed land extending 400 feet landward of the lake’s high-water mark, the Plan specifically allows for placement of powerlines provided that they do not parallel the lakeshore within the buffer.

As the proposed easement is for a public utility line to be installed into Seventeen Mile Lake, SCRO has determined that the proposed easement does not conflict with the intent of the Plan.

ACCESS

Functional legal access to Seventeen Mile Lake herein exists via Seventeen Mile Lake Boulevard.

PUBLIC NOTICE & AGENCY REVIEW

Public Notice Summary

Public notice of the application was conducted from July 8, 2024, to August 7, 2024. The notice was sent to directly adjacent landowners, posted to the State of Alaska Online Public Notice System, the Palmer and Sutton post offices, the Sutton Public Library for display on their notice boards, and Cook Inlet Region Native Corporation.

A total of 1 comment was received during the public notice review and is summarized below:

Public Notice Comment & Response

Comment: Beryl and Lucas Bardsley requested the full application packet.

Response: SCRO acknowledges the request and sent the application packet.

Agency Review Summary

Agency review of the application was conducted from July 8, 2024, to August 7, 2024. The notice was sent to the following recipients:

Local Agencies

- Matanuska Susitna Borough

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 Public Access Assertion and Defense (PAAD)

- DNR Resource Assessment and Development Section (RADS)
- 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 Transportation & Public Facilities; Statewide ROW
- 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

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

Agency Review Comment & Response

Comment: On July 8, 2024, PAAD submitted a comment of non-objection. States that Seventeen Mile Lake is navigable under AS 38.04.062 as well as navigable and public water under AS 38.05.126, and 127 as defined in AS 38.05.965 (14) and (21).

Response: SCRO acknowledges the non-objection.

Comment: On July 8, 2024, the DEC Division of Spill Prevention and Response submitted a non-objection.

Response: SCRO acknowledges the non-objection.

Comment: On July 9, 2024, LCS submitted a comment of non-objection.

Response: SCRO acknowledges the non-objection.

Comment: On July 12, 2024, the US Army Corps of Engineers submitted a non-objection.

Response: SCRO acknowledges the non-objection and provided the additional information to the applicant.

Comment: On July 30, 2024, ADF&G submitted a comment of non-objection.

Response: SCRO acknowledges the non-objection.

Comment: On July 30, 2024, DOT&PF submitted a comment of non-objection.

Response: SCRO acknowledges the non-objection.

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 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 \$6,200.00 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 for ADL 234177. 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.

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 of \$50.00 for any late payment.

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 5 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
- 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.

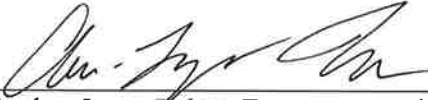

Savannah Lilyhorn, Natural Resource Specialist I
DMLW, Southcentral Regional Land Office

9/6/2024
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.



Amber-Lynn Taber, Easements Unit Manager
DMLW, Southcentral Regional Land Office

9/6/2024

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>.