

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

Regional Manager's Decision

ADL 224820
Willow Trail Committee
Public Access Easement
Corral Hill Trail

REQUESTED ACTION

In July 1989, the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Regional Land Office (SCRO), issued an easement to be held in trust for the public to reserve an existing trail on State-owned, DMLW-managed uplands near Willow, Alaska. On January 29, 2010, a Public and Agency Notice was sent in response to a request for the realignment of the previously approved right-of-way (ROW) (approx. 350ft & 400ft). On February 23, 2010, public notice was sent in response to a request for an amendment for an additional realignment of 1,600 feet of ROW. However, a signed decision was never produced and the process stalled. On March 26, 2024, the Willow Trail Committee (WTC; the applicant) applied for a public access easement to reroute the existing trail away from the eroding riverbank. To that end, the applicant has requested a public access easement approximately 2,500 feet long, 16 feet wide, and approximately 0.918 acres in size.

RECOMMENDED ACTION

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

- Type of easement: Public Access Easement
- Length: 2500 feet
- Width: 16 feet
- Acreage: Approximately 0.918 acres
- Term: indefinite
- Grantee: DMLW

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 Susitna Area Plan and other classification references described herein, and the case file for the application serialized by DNR as ADL 224820.

LOCATION INFORMATION

Geographic Location

Willow, Alaska

Meridian Township Range Section

The applicant has applied to use State-owned, DMLW-managed lands within Section 29, Township 19 North, Range 5 West, Seward Meridian.



FIGURE 1 – The original portion of the trail running from East to West is the upper section in red. The new trail would be moved to the lower red line, away from the Susitna River.

TITLE

The State of Alaska holds title to applicable portions of lands within Section 29 of Township 19 North, Range 5 West, Seward Meridian, Alaska, per Patent Number 50-66-0088 recorded at Palmer Recording District. The associated DNR land acquisition case file is GS 106.

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.

- There are no third-party interests.

PLANNING & CLASSIFICATION

The proposed easement falls within the boundaries of the Southeast Susitna Area Plan (SSAP), adopted April 2008, Map 3 for the Willow Region, Unit S-03. The SSAP Resource Allocation Table lists the land use designation for Unit S-03 as F (Forestry), which converts to classification of Forest Land.

The management intent of Unit S-03 notes that the lands are to be managed consistent with the requirements of the Alaska Forest Resources and Practices Act (FRPA) (AS 41.17.060) which sets standards for management of all state forest land for the management objectives of sustained yield and multiple use (AS 41.17.060(b) and (c)). Additionally, the management plan notes maintaining a 200-foot undisturbed riparian protection buffer adjacent to the Susitna River and its braided channels.

As the proposed easement, ADL 224820, is for public access and the development plan does not conflict with the general management intent of the SSAP, SCRO has determined that the proposed easement is consistent with the overall intent and goals of the Plan.

ACCESS

Functional legal access to the state land discussed herein exists via Deshka Landing Road.

PUBLIC NOTICE & AGENCY REVIEW

Public Notice Summary

Public notice of the application was conducted from September 17, 2024, to October 17, 2024. The notice was posted to the State of Alaska Online Public Notice System and was sent to the Willow and Houston post offices and Willow Public Library for display on their notice boards. The notice was also sent to the Cook Inlet Region, Inc.

No comments were received during the public notice period.

Agency Review Summary

Agency review of the application was conducted from September 17, 2024, to October 17, 2024. The notice was sent to the following recipients:

Local Agencies:

- Matanuska Susitna Borough

State Agencies:

- Department of Transportation & Public Facilities
- DNR DMLW Survey Section
- DNR DMLW Land Conveyance Section (LCS)
- DNR DMLW Reality Services
- 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
- 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

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

Agency Review Comment & Response

Comment: On September 17, 2024, LCS submitted a comment of non-objection

Response: SCRO acknowledges the non-objection

Comment: On September 18, 2024, the DEC Division of Spill Prevention and Response submitted a non-objection.

Response: SCRO acknowledges the non-objection.

Comment: On October 8, 2024, DOT&PF submitted a comment of non-objection.

Response: SCRO acknowledges the non-objection.

Comment: On October 16, 2024, ADF&G submitted a non-objection and provided the following information:

1. The project area intersects with a North American Breeding Bird Survey (BBS) route, which serves as a vital source of bird population data. The BBS involves a line transect method with point counts along the route, providing valuable insights into the breeding bird populations in the vicinity. Among the 47 bird species found nearby 26 are Species of Greatest Conservation Need identified in the 2015 Alaska Wildlife Action Plan. These species may be in decline or culturally, ecologically, or economically important. They also may serve as indicators of environmental change.

Preserving habitat (such as trees, shrubs, or ground cover) while meeting project goals is crucial to safeguard habitat and sustain breeding bird populations. It's advisable to schedule vegetation clearing before or after the breeding season. For more details on nesting seasons, refer to <https://www.fws.gov/alaska-bird-nesting-season>.

2. Project activities may affect Endangered Species Act (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 appreciates the response and has provided the information to the applicant better inform their proposed development.

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 public recreational resources 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

The existing Corral Hill Trail has started to erode into the Susitna River. To ensure safe public access on the trail, the Willow Trail Community plans to relocate the trail south, away from the riverbank. A public easement approximately 2,500 feet long, 16 feet wide, and approximately 0.918 acres, will be issued to DMLW to be held in trust for the public for an indefinite period.

The easement for the portion of the rerouted trail, once issued, will be duplicative to the original alignment created by DMLW in 1989. To ensure that DMLW-managed lands are not encumbered unnecessarily, the original alignment of the trail located closest to the eroding riverbank should be vacated as the new alignment will provide equal or better access along the route. Once a survey of the new alignment has been approved and the easement issued, Willow Trail Committee will be directed to apply to the DNR Survey Section to vacate the original easement in that location.

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 \$4,700.00 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 224820. 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.

FEEES

- 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. This fee is charged in addition to any other land use fees that may be described herein.

- The applicant shall pay a one-time fee of \$120.00 per acre rounded up to the nearest whole acre for a public access easement per 11 AAC 05.070(d)(2)(B) 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 access 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.

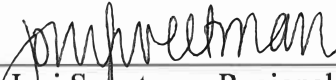

Savannah Lilyhorn, Natural Resource Specialist
DMLW Southcentral Regional Land Office

12/17/2024
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.



Joni Sweetman, Regional Manager
Southcentral Regional Land Office

12/18/2024

Date

ATTACHMENTS

- Entry authorization, unsigned
- Sample 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>