



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

**Southeast Regional Land Office**

**Regional Manager's Decision**

**ADL 106360**

**[APPLICANT]**

Application for Easement

AS 38.05.850

**Executive Summary**

On December 15, 2024 the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW) received an application for private non-exclusive easement renewal from James T. Brennan and Lani J. Brennan for pre-existing infrastructure on State-owned, DMLW-managed land near Baranof Warm Springs, Alaska. The easement is for a pre-existing improvement consisting of a warm water transmission line that routes hot water from Baranof Warm Springs #7 to a residential cabin and a public bathhouse. The easement is 1,200 feet in length, 5 feet in width, totaling 0.138 acres.

The State of Alaska intends to authorize this easement. A diagram of the proposed easement is included as Attachment 1.

**Proposed Action**

The easement consists of a 1.5" OD HDP plastic pipe that routes geothermal hot water from Spring #7 to a private cabin and further along a City and Borough of Stika (CBS) Right of Way to a public bathhouse.

The term of the easement shall be 25 years. A draft private non-exclusive easement is included as Attachment 2.

**Statutory Authority**

This easement application is being adjudicated pursuant to AS 38.05.850, the Alaska Land Act as amended, and AS 38.05.127.

**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 Northern Southeast Area Plan, 2002 (NSEAP) and other classification references described herein, and the casefile for the application serialized by DNR as ADL 106360.

**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.

### **Location Information**

**Geographic Location:** Baranof Warm Springs on the East side of Baranof Island, approximately eighteen miles east of Sitka.

**Property Description:** DMLW managed upland located in Section 24, Township 55 SOUTH, Range 66 EAST, Copper River Meridian, Alaska.

**Width:** 5 Feet

**Length:** 1,200 Feet

**Approximate Acreage:** 0.138 acres

### **Other Land Information**

Municipality: City and Borough of Sitka

Regional Corporation: Sealaska Corporation

Village Corporation: Shee Atika, Inc.

Federally Recognized Tribe: Sitka Tribe of Alaska

### **Title**

The State of Alaska received title to applicable lands within Section 24 of Township 55 SOUTH, Range 66 EAST, Copper River Meridian, Alaska via U.S. Patent No. 50-2011-0197, which is serialized by DNR as NFCG-222.

### **Planning and Classification**

The proposed site is subject to the Northern Southeast Area Plan (NSEAP, October 2002) and is located within Management Unit B-30. The designated land use is Ru (Public Recreation – undeveloped) which converts to Public Recreation Land as the land classification.

According to 11 AAC 55.040(c), “A classification identifies the primary use for which the land will be managed, subject to valid existing rights and to multiple use.”

This residential community of Baranof Warm Springs and the related various water rights and easements predate the area plan are discussed in the NSEAP’s description of B-30’s Resources and Uses. Management intent for unit B-30 is “to maintain the natural resources/scenic values of the parcel, protect the current water easement and trail authorizations, and ensure continuation of its use for dispersed recreation (NSAP 2002, 3-220).” The proposed easement is consistent with the NSAP’s land classification, management guidelines, and management intent.

### **Third Party Information**

None.

### **Background**

The applicants, Mr. and Mrs. Brennan, hold authorizations ADL 43588 and LAS 10367 to appropriate geothermal hot water from Spring #7 in Baranof Warm Springs, near the City and Borough of Sitka. These authorizations work in conjunction with ADL 106360, which covers the

maintenance and use of the existing warm water transmission line from Baranof Hot Water Spring #7 to their cabin and to a public bathhouse on the shore of Warm Springs Bay.

The Brennan family first accessed this water in 1956 when Mr. Brennan's parents constructed and operated the hot water pipe over federal lands, and the pipe has been in continuous use since. ADL 106360 was first granted on July 9<sup>th</sup>, 1998, as a 25-year non-exclusive, private right-of-way easement to the Brennans after a portion of the land across which the pipe traverses was acquired by DMLW.

The waterline is not intended for commercial use.

## **Public Notice & Agency Review**

### **Agency Review Summary**

An Agency Review was conducted October 30, 2024 to December 2, 2024. The following organizations were included in this review: Alaska Department of Fish and Game (ADF&G), Alaska Department of Environmental Conservation (ADEC), and Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation, both the Office of History and Archaeology and the Southeast Region Office.

### **Agency Review Comment and Response**

DNR DMLW, Public Access Assertion and Defense (PAAD) Section

Summary: It is not believed that an additional to and along easement is necessary.

DMLW Response: None required.

DNR DMLW Water Resources Section

Summary: ADNR Water Resources Section noted that the applicants currently hold water right Certificate of Appropriation ADL 43588 and Certificate of Appropriation LAS 10367 for water use associated with the subject easement, both of which are in good standing.

DMLW Response: None Required.

### **Public Notice Summary**

Notice of this application was posted on the Alaska Online Public Notice System website and sent to the following known interested parties:

- Alaska Association of Conservation Districts
- Southeast Alaska Conservation Council
- Sealaska Corporation
- Central Council Tlingit and Haida Indian Tribes of Alaska
- U.S. Army Corps of Engineers Alaska District U.S. Army Corps of Engineers Regulatory Division Southeast Section (Juneau Office)
- U.S. Army Corps of Engineers Regulatory Division South Section (Anchorage Office)
- City & Borough of Sitka Municipal Clerk
- City & Borough of Sitka Municipal Administrator
- City & Borough of Sitka Planning & Community Development Director

- Sitka Tribe of Alaska
- Shee Atika, Inc.

### **Public Notice Comment and Response**

U.S. Army Corps of Engineers Alaska

Summary: If the project would result in the placement of fill material in waters of the U.S. including wetlands, or work in navigable waters (such as tidal waters), a permit from the Corps would be required

DMLW Response: This project will not result in any fill material in U.S. waters.

### **Access**

Physical and Legal Access: Easement is accessed over state-owned uplands using undeveloped game trails. The waterline runs along adjacent muskeg, crossing over creeks and tree roots.

### **Environmental Considerations**

DMLW considers the environmental factors directly related to authorizing the use of State lands as part of its determination of whether approving 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 to approve the authorization. The applicant is responsible for determining site suitability.

Environmental risk associated with the proposed easement is minimal. There are no known environmental constraints or considerations for this site and the proposed use.

### **Economic Benefit and Development of State Resources**

In accordance with AS 38.05.850, DMLW considers three criteria to determine if this project provides the greatest economic benefit to the State and the development of its natural resources: direct economic benefit to the State, indirect economic benefit to the State, and encouraging development of the State's resources.

Easement ADL 106360 effectuates the applicants' water right by authorizing water line transmission across state-owned uplands to supply fresh water and spring water to their individual residence and visitors and users of the public bathhouse. Transmission of water in a remote location develops State natural resources with minimal impact. The easement provides an indirect benefit to the State in the form of taxes, levies, fees, etc. assessed on residential properties by the City and Borough of Sitka. The easement provides modest but direct economic benefit to the State through the annual fees it generates.

### **Performance Guaranty**

Performance guarantees are means to assure performance and to provide ways to pay for corrective action if the permittee fails to comply with the requirements set forth in the permit document. They are also used to protect state land from damage and to make certain that improvements are removed and that the land is returned in a usable condition upon termination of the permit.

**History of Compliance:** DNR Land Administration System records indicate that the applicant is in a state of compliance with the terms of other DMLW-issued authorizations.

**Performance Guaranty Narrative:** The applicant is required to maintain the current performance guaranty in the amount of \$1,000.00 to ensure performance and, if required, removal of transmission lines under the terms of the easement. This guarantee was first submitted May 22, 2024, when coverage was transferred from the closed ADL 106267. The guaranty may also be adjusted to reflect updates and changes in the associated project, and the applicant may be required to furnish an additional performance guaranty if DMLW determines there to be additional risk to the State. The 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 easement agreement.

### **Insurance**

In accordance with 11 AAC 96.065, and in consideration of the low risk associated with the authorization and the applicant's history of compliance with DMLW-issued authorizations, insurance is not required at this time. DMLW reserves the right to require insurance during the term of the easement.

### **Survey**

In lieu of a Record of Survey, the applicant is required to provide an as-built easement diagram of the waterline that meets the guidelines of the DMLW Surveys Section. Attachment 1 is the basis for the easement diagram.

### **Fees**

Easement: In accordance with 11 AAC 05.070(d)(2)(A)(i), the fee for a private non-exclusive right-of-way easement containing approximately 0.138 acres is \$600.00.

Director's Fee Order Number 3 (06/12/2018): In accordance with 11 AAC 05.070(d)(2)(A)(i), fees for a total of no more than one acre in area are reduced to \$480.00 annually.

The total annual fee is estimated to be \$480.00.

Recording: The applicant shall pay the appropriate recording fees as determined based on current regulation to have the easement document recorded by DMLW. Recording fees shall be paid prior to the execution of the easement document.

### **Easement Term**

The authorization requested under ADL 106360 will be issued for a term of 25 years from the effective date of this decision.

**Term Discussion**

Easements issued under AS 38.05.850 may be revoked for cause if the area described is no longer used for the purpose intended or if a higher and better use of the land is established as determined by DMLW. Following termination an easement, whether by abandonment, revocation, or other means, a grantee shall restore the site to a condition that is acceptable to DMLW. A grantee’s planned site restoration activities, including either removal or abandonment of installed improvements, must be described in writing and present to DMLW prior to termination of the easement. DMLW may require compliance with additional conditions specific to the site restoration effort that were not required for the construction, maintenance, or operation of described improvements. Should a grantee or refuse to perform approved site-restoration activities within the time allotted by DMLW, the improvements may become property of DNR. However, a grantee shall not be relieved of the cost of restoring the area to a condition that is acceptable to DMLW.

**Recommendation**

In consideration of all events and criteria described above, it is my determination that this project is consistent with the overall classification and management intent for this land and would be a benefit to the State of Alaska. Therefore, I recommend issuance of a private non-exclusive right-of-way easement to James T. Brennan and Lani J. Brennan pursuant to AS 38.05.850, upon satisfactory completion of the project in conformance with all the terms and conditions of this decision. The easement will be issued for a term of 25 years from the effective date of this decision that may be terminated if a higher and better economic use for the project area is established as determined by DMLW Director, if the land is no longer used for the above stated purpose, or is revoked for cause.

  
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Ariel Svetlik, Natural Resource Specialist

01/08/2025  
Date

**Regional Manager’s Decision**

When adjudicating an easement authorization pursuant to AS 38.05.850, DNR seeks to responsibly develop Alaska’s resources by making them available for maximum use and benefit consistent with the public interest. In consideration of all events and criteria listed above, DMLW has determined that the authorizations to be granted under ADL 106360 are consistent with DNR’s mission. It is my decision that this project is consistent with the overall classification and management intent for this land. DMLW will issue a private non-exclusive right-of-way easement, pursuant to AS 38.05.850, once the applicant has conformed to all terms and conditions of this decision and the EA.

  
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Mason Auger, Natural Resources Manager II

1/8/2025  
Date

Attachments:

Attachment 1. Development Diagram; Attachment 2. Draft Easement

An eligible person affected by this decision, and who provided timely written comment or public hearing testimony to the department, may appeal the decision 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](mailto: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>.