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

# Regional Manager's Decision

ADL 234041
Robert Thornquist
Public Access Easement
West Papoose Lake Driveway Access

# **REQUESTED ACTION**

On July 28, 2023, the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Regional Office (SCRO), received an application for a cross-country travel land use permit from Robert Thornquist (the applicant) for a proposed road on State-owned, DMLW-managed uplands near West Papoose Lake, Alaska. The purpose of the proposed development is to provide access to the applicant's private property. The applicant has requested a road approximately 500 feet long, 25 feet wide, and 0.29 acres in size.

## RECOMMENDED ACTION

In consideration of the functional irrevocability of the proposed development the land use permit application is hereby being adjudicated as an easement application.

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

- Type of authorization: Change from cross country travel permit to public access easement
- Length: Approximately 500 feet
- Width: Change from unspecified to approximately 25 feet
- Acreage: Change from unspecified to approximately 0.29 acres in size
- Term: Change from 5 years to indefinite
- Grantee: Change from applicant to 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 casefile for the application serialized by DNR as ADL 234041.

#### **LOCATION INFORMATION**

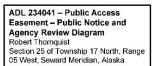
# **Geographic Location**

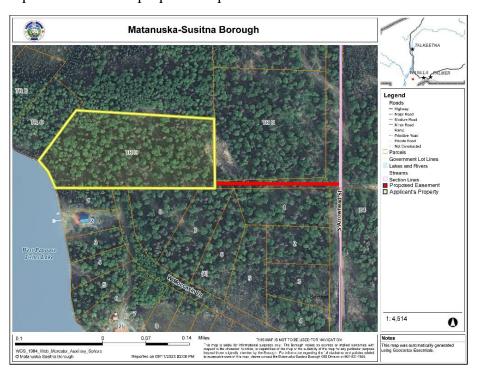
West Papoose Lake, Alaska

# **Meridian Township Range Section**

E1/2 of Section 25 of Township 17 North, Range 5 West, Seward Meridian, Alaska

FIGURE 1 – A map that depicts the area and proposed improvements.





# **TITLE**

The State of Alaska holds title to applicable portions of lands within Section 25 of Township 17 North, Range 5 West, Seward Meridian, Alaska per Patent Number 50-66-0088 recorded in the Palmer Recording District. The associated DNR land acquisition casefile is GS 106.

#### THIRD PARTY INTERESTS

There are no third party interests within the scope of the proposed development.

#### PLANNING & CLASSIFICATION

The project area affected by this proposal is discussed in the 2008 DNR Southeast Susitna Area Plan (SSAP, the plan). The proposed development falls within the Big Lake – Houston Region but is unclassified. Chapter 4 of the SSAP speaks to State Lands not identified in the text of the plan or on plan maps. Parcels that are immediately adjacent to existing communities or past state land offerings, as is the parcel containing the proposed developed, receive the designation of Settlement, and the classification of Settlement Land (pg. 4-7). These lands can be considered for disposal so long as they are not appropriate for the development of schools, material sites, roads, parks, or other similar public use (pg. 4-7).

The proposed easement, ADL 234041, promotes access to Settlement land and proposes to develop State land that is otherwise unsuitable for development (i.e. school, material site, park, or similar public use as mentioned in the SSAP) due to its size and dimensions, approximately 50 feet wide and 500 feet long. In consideration of the above information, the proposed easement, ADL 234041, is therefore consistent with the management plan.

#### **ACCESS**

Functional legal access to the state land discussed herein exists via South Arrowhead Street.

#### **PUBLIC NOTICE & AGENCY REVIEW**

## **Public Notice Summary**

Public notice of the application was conducted from September 14, 2023, to October 16, 2023. The notice was posted to the State of Alaska Online Public Notice System and was sent to the Big Lake, Houston, and Willow post offices for display on their notice boards, in addition to the following recipients:

- Cook Inlet Region, Inc. (CIRI)
- Cook Inlet Tribal Council, Inc.
- Big Lake Community Council
- Adjacent Landowners:
  - o Dollas Copeland
  - o Kevin and Linn McCabe
  - Michelle and Andrew Traxler

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

## **Public Notice Comment & Response**

**Comment:** On October 11, 2023, a member of the public submitted a comment objecting to the proposed easement. The objection was based on environmental concerns, the existence of alternative access, and previous attempts to develop a road within the same footprint.

The commenter stated that the proposed development traverses swampland and states general concern over surrounding habitat.

The commenter stated that alternative access to the applicant's parcel exists. One point of access to the applicant's parcel is W. Moccasin Dr., an undeveloped, platted road that

traverses the Papoose Twins Subdivision, and an unplatted primitive road south of W. Moccasin Dr. that traverses private property. The unplatted road is developed almost entirely to the applicant's property. The use of one of these routes, the commenter states, would be better for the environment and property value of surrounding properties.

The commenter stated that the applicant has attempted to develop within the footprint of the proposed development in the past. This attempt to develop resulted in "a mess using inadequate equipment, operator, and no plan or map of placement of this road" and had "a negative effect on our property and caused the resale price to drop".

## **Response:**

Environmental considerations not addressed in this decision are beyond the scope of this decision. Appropriate environmental state and federal agencies were noticed during the Agency Notice period. No comments were received from state or federal agencies during the notice period concerning environmental consideration. Alternative routes exist to the applicant's property via W. Moccasin Dr., the partially developed road through private property south of W. Moccasin Dr., and, additionally, a 25' interior lot line easement of Tract E of ASLS 84-37. However, this decision is specifically looking at whether the development as proposed is in the best interest of the State. Any prior construction conducted within the footprint of the proposed development without authorization to use said state-owned land would be considered conducted in trespass, however no evidence has been presented to this office to show this unauthorized action took place. Any damage to private property in relation to this prior construction would be considered a civil matter.

No other comments were received.

#### Agency Review Summary

Agency review of the application was conducted from September 14, 2023, to October 16, 2023. The notice was sent to the following recipients.

## **State Agencies**

- DNR Division of Parks and Outdoor Recreation (DPOR)
- DNR DPOR, Office of History and Archaeology (SHPO)
- DNR, Division of Forestry, Mat-Su Area Forester
- DNR, Mental Health Trust Land Office
- Department of Transportation and Public Facilities (DOT&PF), Statewide Right-of-Way Coordinator
- Department of Environmental Conservation (DEC), Division of Water, Waste Water
  - Solid Waste Program
  - Alaska Pollutant Discharge Elimination System Program
  - o Engineering Support and Plan Review
- DEC Environmental Health, Drinking Water
- DEC Spill Prevention, Contaminated Sites
- Alaska Department of Fish and Game (ADF&G), Access Defense
- ADF&G, Habitat, Southcentral

 Alaska Department of Commerce, Community and Economic Development, DCRA, LGA

# **Federal Agencies**

• US Army Corps of Engineers

#### **Local Agencies**

- MSB Land and Resource Management
- Palmer Soil and Water Conservation District

A total of 2 comments were received during the agency review and are summarized below:

# **Agency Review Comment & Response**

Comment: On October 3, 2023, DOT&PF stated that they have no comment at this time.

**Response:** SCRO acknowledged the comment.

**Comment:** On October 16, 2023, ADF&G stated that they have no objection to the proposed easement. ADF&G submitted the comment that the development area overlaps with the North American Breeding Bird Survey zone, and that preserving trees and shrubs where possible helps preserve habitat, and, to the same end, activities are best conducted outside of the breeding season from May 1st – July 15th.

**Response:** SCRO acknowledges the comment and has forwarded it to the applicant.

No other comments were received.

## **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, it is recommended that no fuel or other hazardous materials are 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. 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 applicant initially applied for Cross Country Travel, Land Use Permit (LUP) on June 5, 2022. Due to the nature of the proposed authorization the applicant was seeking, the applicant was directed to apply for an easement using DMLW's easement application form. The reason for adjudicating this application as an easement as opposed to an LUP is because the proposed development, a road, is not functionally revocable, and is therefore considered a disposal of State interest. A second iteration of an LUP application was submitted on July 28, 2023, and reviewed

for completeness. It was determined to contain enough information to adjudicate as an easement application and is the source document for this decision.

SCRO recognizes that there is established legal access to the applicant's parcel which would not require issuance of a new easement, both along W. Moccasin Drive and a 25' interior lot line easement located within the southern boundary of Tract E of ASLS 84-37. However, the state land proposed for use by the applicant is essentially a remnant parcel and is unlikely to have any alternative potential uses outside of development of a roadway to access the applicant's land due to the narrow and linear nature of the parcel. As issuance of this easement will provide an economic benefit in the form of land use fees to the State, and represents a shorter construction approach for the applicant, SCRO finds the applied for route to be appropriate.

#### 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 \$5,600.00 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 DMLWapproved 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**

In consideration of the low risk associated with the proposed authorization and the applicant's known history of compliance, insurance will not be required at this time. DMLW reserves the right to require insurance during the term of the easement.

#### **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. [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 for any late payment of \$50.00.

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 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 totaling \$240.00.
- Evidence of having made request for survey instructions to the DMLW Survey Section.
- 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.

Evan Dodd	9/10/2025	
Evan Dodd, Natural Resource Manager 1	Date	
DMLW Southcentral Regional Office		

#### 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  $31^{\rm st}$  calendar day after issuance.

Brent Reynolds	9/10/2025	
Brent Reynolds, Natural Resource Manager 2	Date	
DMLW Southcentral Regional Office		

#### **ATTACHMENTS**

• Entry authorization, unsigned

#### 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 <a href="mailto:dnr.appeals@alaska.gov">dnr.appeals@alaska.gov</a>. 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 <a href="mailto:dnr.appeals@alaska.gov">dnr.appeals@alaska.gov</a>, and is also available on the department's website at <a href="https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf">https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf</a>.