STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
Southcentral Regional Land Office

Regional Manager's Decision

ADL 221008
Nutrien US LLC
Private Non-Exclusive Easement

REQUESTED ACTION
On March 29, 2022, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Southcentral Regional Land Office (SCRO) received an application for reissuance of an easement from Nutrien US LLC for a pre-existing waterline on State-owned, DMLW-managed uplands near Nikiski, Alaska. The purpose of the proposed easement is to continue to provide water from the Cabin Lake wells to the nearby Kenai Nutrien Plant. The applicant has requested reissuance of a private non-exclusive easement approximately 105 feet long, 30 feet wide, and 0.07 acres in size, more or less.

RECOMMENDED ACTION
Staff recommend that the requested action be modified, and that an easement be reissued with the following parameters:

- Width: 30 feet
- Length: 105 feet
- Acreage: Approximately 0.07 acres
- Term: 25 years
- Grantee: Nutrien US LLC
- Type of easement: Private Non-Exclusive

Staff's research and recommendations concerning the reissuance of this easement and any changes from the applicant's request are discussed below.

SCOPE OF DECISION
The scope of this decision is to determine if it is in the State's interest to reissue 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 reissuing 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 2000 Kenai Area Plan, other classification references described herein, the casefile for the application serialized by DNR as ADL 221008, and the related preceding casefile for the application serialized by DNR as ADL 217476.

LOCATION INFORMATION

Geographic Location

The applicant has requested that DMLW authorize an easement near Nikiski, Alaska.

Meridian Township Range Section

The applicant has applied to use State-owned, DMLW-managed uplands within Section 23, Township 7 North, Range 12 West, Seward Meridian.

Other Land Information

Borough: Kenai Peninsula Borough
Regional Corporation: Cook Inlet Region, Inc.

TITLE

The State of Alaska holds title to applicable portions of lands within Section 23 of Township 7 North, Range 12 West, Seward Meridian, Alaska, per Corrected Patent Number 50-2009-0256 recorded at the Kenai Recorder's Office. The associated DNR land acquisition casefile is MH 25. The lands underlying the prior material sale (ADL 201811) were originally included on the list of lands hypothecated to the Mental Health Trust pursuant to Sec. 56 Ch. 66, SLA 1991. On June 23, 1994, the lands in question were repealed from hypothecation pursuant to Ch. 5, FSSLA 1994.

THIRD PARTY INTERESTS

The applicant has requested an easement that may impact the following interests:

Third Party Notice Comment & Response

- ADL 231675, Material Sale Site, DNR SCRO Material Sales
- ADL 227967, Municipal Entitlement, Kenai Peninsula Borough

PLANNING & CLASSIFICATION

The requested easement is located within state-owned uplands within the boundaries of the 2000 Kenai Area Plan (KAP), Map 5B, Unit 299, Region 5. Unit 299, named Materials Site at Miller Loop Road, is designated as Materials (ma), which converts to a classification of Material land by the Conversion of Upland Designations to Classifications Table (Table 4.1, pg. 4-4).

Per 11 AAC 55.120, the classification of Material land (ma) is applied to land that is suitable for the extraction of common varieties of sand, gravel, stone, peat, clay, and other similar materials.

The management intent for Unit 299, listed within the Resource Allocation Table (RAT) on page 3-141 is to use the land as a material site. When DOT&PF is through with the materials site, it can be considered for settlement or conveyance to a municipality. The RAT states that this materials site was initially issued as a Public Free Use Permit and later changed to an ILMA under ADL 201811.

Chapter 2 of the area plan presents land management policies for the area. The Kenai Area Plan manages state land for multiple uses unless a more specific land designation applies (2-2). Designated uses, such as materials sites, are given priority, but other uses may still be allowed if they are compatible and do not interfere with the primary purpose of the area (2-2). Because material resources on state land are limited, nearly all known material sites are designated and managed for Materials and related transportation uses (2-33).

Accordingly, an existing waterline that has long coexisted with a designated materials site is consistent with the plan, provided it does not interfere with the site's materials and transportation functions. The structure described herein has coexisted with the materials site since its first issuance and does not conflict with the management intent and guidelines of the area plan.

ACCESS

Functional legal access to the state land discussed herein exists via Miller Loop Road.

AGENCY REVIEW

Summary

Agency Notice efforts and responses for the easement project described in ADL 221008 were originally completed under ADL 217476. A second agency review was conducted, due to time passed since the initial review, and completed on March 4, 1986. Review packets were sent to the following agencies: Alaska Department of Fish and Game (ADF&G); Department of Environmental Conservation (DEC); Kenai Peninsula Borough (KPB), Planning; Division of Parks and Outdoor Recreation (DPOR), Archaeology; and the Divisions of Land, Forestry, Agriculture, Mining, and Oil & Gas. There were no objections to the proposed project.

ENVIRONMENTAL CONSIDERATIONS

Staff evaluate environmental factors directly related to the authorization of use of state lands, specifically whether the approval of 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 or not to approve the authorization.

Environmental contamination risk associated with this proposed easement is minimal. Staff recommend 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. Staff further recommend that no fuel or other hazardous materials are authorized to be stored on site. There are no other known environmental considerations or constraints in this location.

ECONOMIC BENEFIT & DEVELOPMENT OF STATE RESOURCES

In accordance with AS 38.05.850, DMLW considers if the requested authorization will provide the greatest economic benefit to the State and development of its natural resources. Specifically, staff assess both direct and indirect economic benefits and whether the proposed authorization encourages the development of the State's resources.

The authorization considered herein will provide a direct economic benefit to the State in the form of land use fees. Additionally, the proposed easement facilitates the operations of a private industrial facility, which will promote conditions for economic development, thus providing an indirect benefit to the state. In consideration of these factors, and because there are no competing requests for authorization, staff advise that approval of this easement will provide the greatest economic benefit to the State.

DISCUSSION

Staff recommend that an easement of a width of 30 feet and a length of 105 feet, totaling 0.07 acres, more or less, with an indefinite term described in 11 AAC 51.015 be reissued in order to reauthorize the existing infrastructure and allow for maintenance activities.

On October 20, 1983, SCRO received an application for a private, non-exclusive right-of-way permit for a road and the described underground pipeline from the Union Oil Company Chemicals Division of California serialized as ADL 217476. A Letter of Entry was in effect on October 20, 1984. The authorization expired on October 20, 1985 (under SCR 85-20) for the construction and maintenance of an underground water pipeline and of an existing well house driveway. The buried water pipeline crosses two sections of land, sections 23 and 26. Salamatof Native Association selected a part of section 26, including the land that contained the well house, driveway, and the partially constructed pipeline. The casefile was then segregated into two ROW casefiles – ADL 217476 and ADL 221008. ADL 217476 was issued and the section of land that was transferred to Salamatof Native Association was made subject to the issued ROW. The remaining portion of the ROW (ADL 221008) was located on DMLW-managed land within section 23. The buried pipeline was constructed under the authorization of the letter of entry. The as-built survey for ADL 221008 was drawn on March 19, 1985, and approved on September 18, 1986, by Jerome Pape, Chief Cadastral Surveyor.

This parcel was conditionally approved to the Kenai Peninsula Borough under municipal entitlement ADL 227967. Management has not yet transferred to the Kenai Peninsula Borough because DOT&PF has not relinquished the material site. Per page 5 of the final finding and decision, management authority will not transfer unless DOT&PF determines that the property is no longer necessary for construction projects or maintenance operations and relinquishes its ILMA (ADL 201811) interest in the property. To date, DOT&PF has not relinquished and confirmed to DNR on October 22, 2025, that they do not intend to relinquish. The waterline has coexisted with the co-located materials site since its installation. The use and authorization of the waterline does not conflict with the use of the materials site.

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, etc.), restoration (interim and final), and any associated costs after termination or expiration of the easement. In consideration of the low risk associated with the proposed authorization and the applicant's known history of compliance, staff recommend that a performance guaranty not be required at this time. DMLW reserves the right to require a performance guaranty during the term of the easement.

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.

INSURANCE

Staff recommend that the applicant 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 easement for ADL 221008. The applicant will be responsible for maintaining the necessary insurance during the term of the easement. 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 easement.

SURVEY

The DMLW Survey Section approved the as-built survey for the proposed easement on September 18, 1986. The survey was subsequently recorded in the Kenai Recording District on December 4, 1998, in Book 546, Page 883.

FEES

Staff find that the following fees are applicable to this request. 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, and will be subject to non-sufficient fund and late payment penalty fees. All fees shall accrue from the effective date of the decision.

- The applicant shall pay an annual rental fee of $240 per acre rounded up to the nearest acre, with a $480 minimum, totaling $480 per 11 AAC 05.070(d)(2)(A).

The Grantee shall pay a fee for any late payment. The amount is the greater of either $50.00 or interest accrued daily at the rate of 10.5% per annum and 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

The entry authorization is an interim authorization that is issued when a survey is necessary prior to easement issuance. Staff recommend waiving the entry authorization as the easement can be located by an existing as-built survey. However, staff recommend that the easement not be granted until the following deliverables have been provided to DMLW, as described or recommended above:

- Land use fees.
- Insurance.

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 the recommendation of staff to reissue an easement as described above, on the condition that all stipulations are followed as described in the attached authorization.

Mary Campbell

Mary Campbell, Natural Resource Specialist 2
DMLW Southcentral Regional Land Office

7/20/26

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 reissuance 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 first business day after the twentieth calendar day after signature.

Brent Reynolds

Brent Reynolds, Natural Resource Manager 2
DMLW Southcentral Regional Land Office

7/20/2026

Date

ATTACHMENTS

- 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 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.