

Regional Manager's Decision
AS 38.05.850(a)
ADL 419886 – Public Easement – Road to Tanana
Alaska Department of Transportation & Public Facilities

Proposed Action

The Alaska Department of Transportation and Public Facilities (“DOT”) has applied to the Alaska Department of Natural Resources, Division of Mining, Land and Water (DMLW), Northern Region Office (NRO) for a public access easement for a new road from the Elliott Highway near Manley Hot Springs to Tanana. The requested 300-foot wide easement is located between Tofty (at the end of the Tofty Road) and the south bank of the Yukon River near Tanana and consists of approximately 16.7 miles of the 36 mile project.

The DMLW NRO proposes to issue an early entry authorization for construction/upgrade and as-built survey for the proposed work, and to issue a public easement to DOT upon final approval of the survey.

Scope of Decision

The scope of this decision is to determine if it is appropriate to issue an easement for this proposed use after review of the application, relevant materials and agency/public comments.

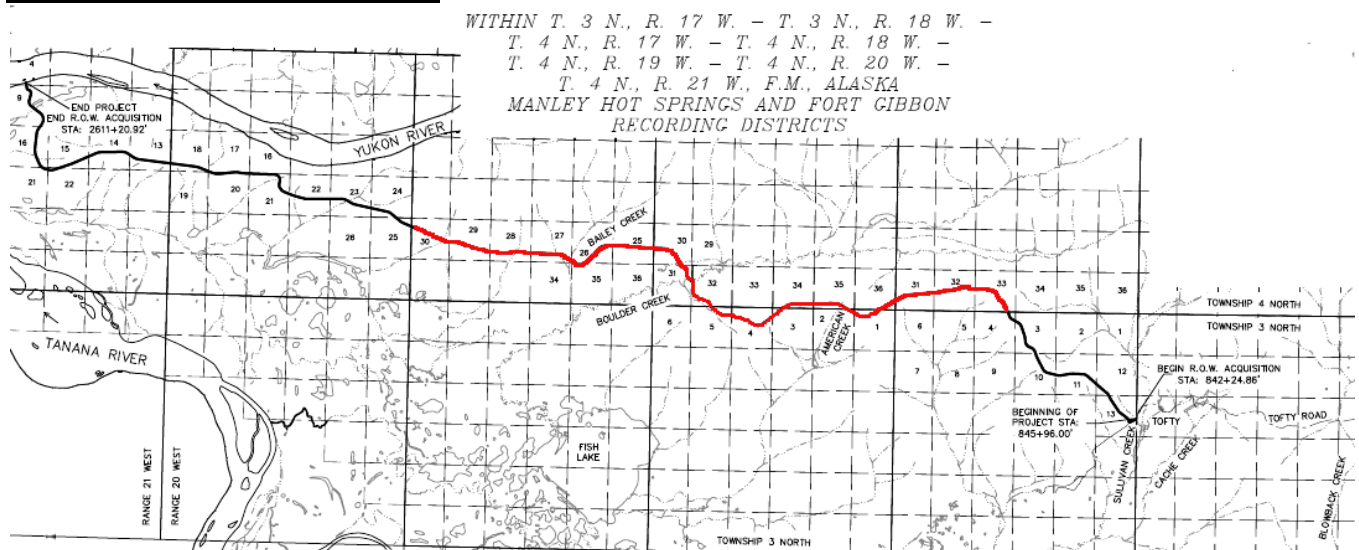
Authority

This easement application is being adjudicated pursuant to AS 38.05.850 and 11 AAC 51.

Administrative Record

The administrative record for the proposed action consists of this case file (ADL 419886), this decision, and by reference, LAS 28547, and the 1991 Update for the Tanana Basin Area Plan (TBAP).

Location and Legal description



Geographic: The proposed road project connects the community of Tofty, near the end of the Elliott Highway, to the south bank of the Yukon River, approximately 7 miles east of the city of Tanana. The proposed NRO easement would be over state lands within roughly the middle third of the project (depicted in red above).

Borough/Municipality: The proposed easement is located within the Unorganized Borough.

Regional/Village Corporation: Doyon Regional Corporation. Bean Ridge Corporation and Tozitna, Limited.

USGS Quadrangle Maps (1:63,360): Tanana (A-2, A-3, A-4)

Legal Description:

A public easement 88,167 feet in length, more or less, by 300 feet in width, comprising 607 acres, more or less, within:

Sections 31 through 33, Township 4 North, Range 17 West, Fairbanks Meridian.

Sections 1 through 5, Township 3 North, Range 18 West, Fairbanks Meridian.

Sections 30 through 32, and Sections 34 through 36, Township 4 North, Range 18 West, Fairbanks Meridian.

Sections 25 through 30, and 35, Township 4 North, Range 19 West, Fairbanks Meridian.

Title

Table 1:

MTRS	PAT/TA	PATENT/TA#	DATE	STATE SELECTION FILE
FM T004N R017W 31, 32, 33	PATENT	50-2004-0002	10/1/2003	GS 2387
FM T003N 018W 1, 2, 3, 4, 5	PATENT	50-2007-0409	4/19/2007	GS 3439
FM T004N 018W 30, 31, 32, 34, 35, 36	PATENT	50-2007-0320	4/2/2007	GS 3453
FM T004N 019W 25, 26, 27, 28, 29, 30, 35	PATENT	50-2008-0323	5/23/2008	GS 2388

Patents to the above lands appear unencumbered, save the standard reservation to the United States for rights-of-way constructed pursuant to 43 U.S. 945 (ditches and canals).

Planning and Classification

The proposed easement is located upon lands classified in the Tanana Basin Area Plan as follows:

Table 2:

MTRS	SUBUNIT	CLASSIFICATION
FM T004N R017W 31, 32, 33	2C1 "Fish Lake Watershed"	Wildlife Habitat Prohibited Surface Uses: Land Disposals, Remote Cabins. Other uses not specifically prohibited may be allowed. Comments: "priority area for enforcement of water quality regulations" Unit Management Intent: "retained in public ownership for multiple use management. The emphasis is on maintaining fish and wildlife habitat." Management Guidelines: "Traditional fishing, hunting, and harvest of other resources for personal use is one of the principal uses of state land in this unit. Decisions to authorize land use activities will consider the effect on and minimize significant conflicts with traditional uses of fish and wildlife resources."
FM T003N 018W 1, 2, 3, 4, 5		
FM T004N 018W 30, 31, 32, 34, 35, 36		
FM T004N 019W 25, 26, 27, 28, 29, 30, 35		

Nothing in the plan prevents issuance of this easement.

Traditional uses of the area include fishing and hunting. Granting a public easement may affect these uses, in that access to the area by larger segments of the public will be possible. However, more rudimentary access to the area has already long been possible, due to historic—and current—mining activity. A variety of unimproved roads exist in the area, and the proposed easement would, to a partial extent, improve sections of some of those roads. Two "RS 2477" routes, RST 152 (Nenana-Tanana "Serum Run" Trail) and RST 841 (Fish Lake-American Creek) are also in the area. Moreover, DNR received no comments from agencies or the public indicating that significant conflicts with traditional uses of fish and wildlife resources were expected (see Public Notice and Agency Comment sections below).

The impact of the project on fish and wildlife resources may be minimized by a variety of mitigation measures. These measures are set forth in the Mitigation Plan (titled "Application Block 23: Mitigation (Revision 1.0)") submitted by DOT to the United States Army Corps of Engineers in connection with their Section 10/404 Permit Application (POA-2013-50). DOT has stated, for example, that "Construction timing will follow recommendations of the USFWS and ADF&G regarding establishment of seasonal windows or other BMP's or stipulations...to minimize construction impacts to fish and wildlife resources." (p. 17)

DEC-Division of Water issued a Certificate of Reasonable Assurance on July 3, 2013. Additional permitting to ensure water quality is retained will be conducted by DEC after construction contracts are issued.

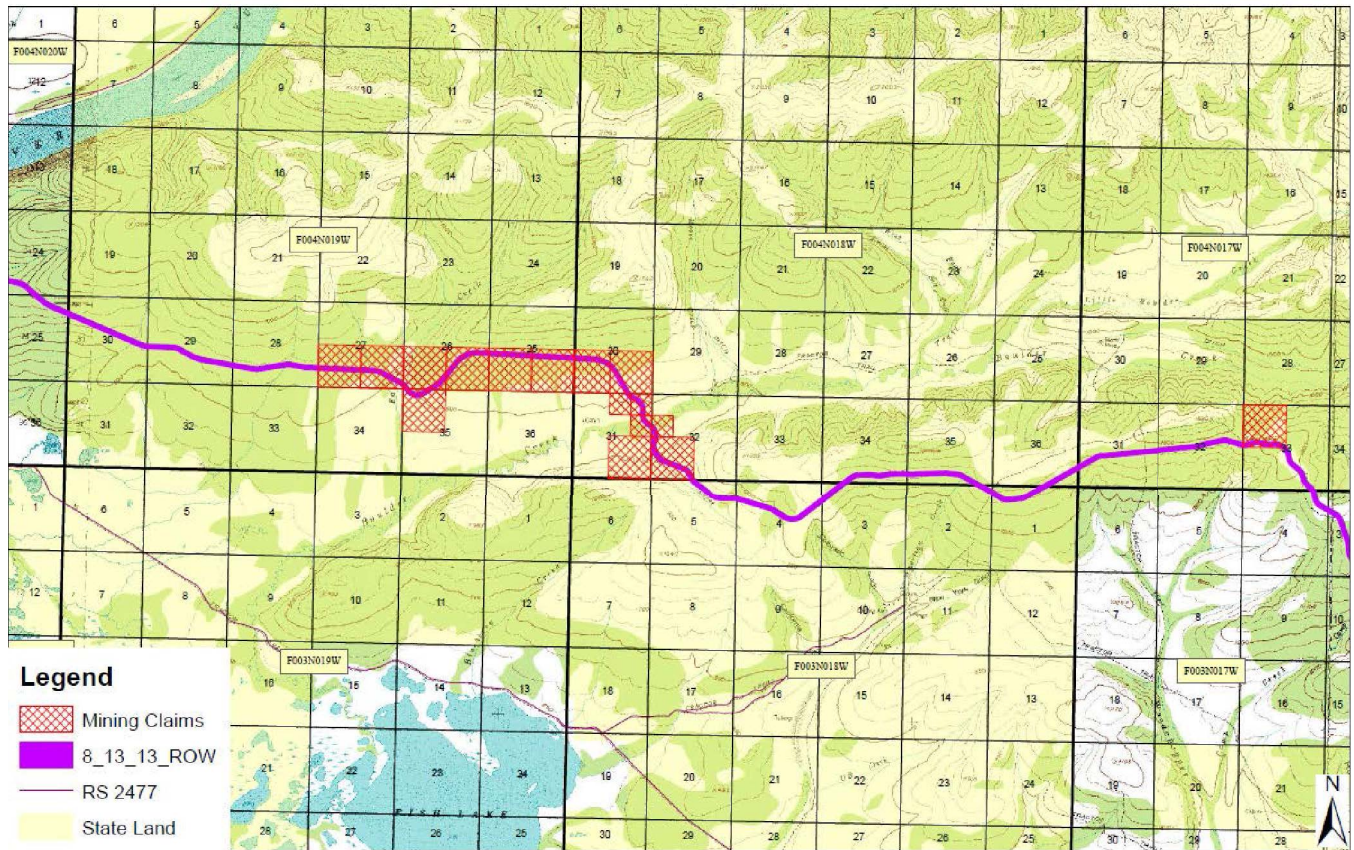
Mineral Estate: The overall road project may impact a number of mining claims, either directly where the easement would overlay the claim, or by potentially impacting access. These mining claims include both federal claims as well as state claims. DOT continues to negotiate with potentially affected claim holders. The state claims include the following:

Table 3:

MTRS	ADL'S	CLAIM HOLDER	Location within Section
FM T004N R017W 31 FM T004N R017W 32 FM T004N R017W 33	<i>none active</i> <i>none active</i> 616554	Terry Russell	NW ¼.
FM T003N R018W 1 FM T003N R018W 2 FM T003N R018W 3 FM T003N R018W 4 FM T003N R018W 5	<i>none active</i> 607058-9 646638-9 <i>none active</i> <i>none active</i>	Clark Bishop Nordwand Enterprize	W ½. No apparent ROW overlap. S ½. No apparent ROW overlap.
FM T004N R018W 30 FM T004N R018W 31 FM T004N R018W 32 FM T004N R018W 34 FM T004N R018W 35 FM T004N R018W 36	618268-9 617524 616319 713974 708909 617522-3 604345-6 708910 616318 617525 <i>none active</i> <i>none active</i> <i>none active</i>	Marco Ruiz Trabits Group, LLC Donna Brady Robertson George W. Seuffert Jr. George W. Seuffert Jr. Trabits Group, LLC George W. Seuffert Jr. George W. Seuffert Jr. Donna Brady Robertson Trabits Group, LLC	S ½. SE ¼. SE ¼ NE ¼. NE ¼ NE ¼. NW ¼ NE ¼. In W ½. No apparent ROW overlap. In W ½. No apparent ROW overlap. In W ½. No apparent ROW overlap. SW ¼ of NE ¼. No apparent ROW overlap. SW ¼.
FM T004N R019W 25 FM T004N R019W 26 FM T004N R019W 27 FM T004N R019W 28 FM T004N R019W 29 FM T004N R019W 30 FM T004N R019W 35	618266-7 618264-5 618262-3 none none none 618274 618275-6 618281 713970-1 618282-3	Marco Ruiz Marco Ruiz Marco Ruiz Marco Ruiz Marco Ruiz Marco Ruiz George W. Seuffert Jr. Marco Ruiz	S ½. S ½. S ½. NW ¼. NE ¼. No apparent overlap. SW ¼. No apparent overlap. N ½ of SE ¼. No apparent overlap. S ½ of SE ¼. No apparent overlap.

Twenty one contiguous sections of state land would be encumbered by the proposed easement. The Tofty area has a long history of mining activity, and myriad claims have over the years been both staked and abandoned. The current state claims which overlap this easement are shown below:

ADL 419886 Tanana Road Mining Claims



DOT has indicated that the mining claim holders are generally supportive of the easement, as the claim holders would benefit from much improved access to their claims. This general support, however, is tempered by miners' concerns that the road would decrease the feasibility of future mineral development in the specific area of the easement upon their claim. One claim holder commented during the public notice period (see Public Notice, below, for contents and response).

To generally address the approach of balancing the interests of mining claim holders and the general public interest in the proposed easement, DNR looks to the content of two germane statutes:

AS 38.05.255 (a) states:

"Surface uses of land or water included within a mining property by the owners, lessees, or operators shall be limited to those necessary for the prospecting for, extraction of, or basic processing of minerals and shall be subject to reasonable concurrent uses."

AS 38.05.285 states:

"Disposal and use of state land shall conform to the constitution of the State of Alaska and the principles of multiple purpose use consistent with the public interest."

Looking in turn to the Alaska Constitution, Article VIII, Section 1 states that our policy is “to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.” and, further, that “[s]urface uses of land by a mineral claimant shall be limited to those necessary for the extraction or basic processing of the mineral deposits, or for both.” (*Id.* at Art. III, Sec. 11). In light of this, the relevant inquiry becomes whether issuance of a public easement represents a reasonable concurrent use (i.e. an additional “multiple” purpose) consistent with the public interest.

The public benefit likely to be derived from providing highly improved access to the community of Tanana appears high. DOT has reported that the community of Tanana has been highly supportive of the project and that comments at a spring 2013 open house indicated a strong desire to expedite the project so that the economic benefits of both the construction and improved transportation link may be realized. The improved transportation link will also provide better access to the very claims over which the easement would pass, and it is not clear that the particular areas of the claims over which the easement would pass are (or, for that matter, are not) viable for economical development. In the event that a pre-existing claim holder provided reasonable notice to the State of intent to mine beneath State surface improvements, and reasonably demonstrated that mining that particular area was reasonably necessary to extract minerals, development of the mining claim could still occur. In the case of pre-existing claimholders, and upon such notice and showing, DOT would bear the expense of restoring the road after mineral extraction; in the case of later claimholders, however, such claimholders would bear the expense.

DOT continues to work toward agreement with existing mining claim holders to harmonize the existing subsurface and proposed surface interests. In light of these factors, issuance of this easement appears to be a reasonable concurrent use consistent with the public interest. The bare possibility that a conflicting surface use necessary to extract and/or basically process mineral deposits might later arise should not preclude uses of the surface which may provide significant public benefit.

Background

The city of Tanana, incorporated in 1961 and about 130 miles west of Fairbanks, is situated on the north bank of the Yukon River at its confluence with the Tanana. It is a major community along the Yukon River and was a traditional trading settlement for Koyukon and Tanana Athabascans long before European contact. Tanana was also the site of “Fort Gibbon,” a telegraph maintenance station between 1898 and 1923, and was also the site of an air base operated during World War II as part of the lend-lease aircraft program. Access to the community is currently by air and river transportation. No roads currently connect Tanana to the highway system.

The Elliott Highway currently terminates at the community of Manley Hot Springs, approximately 160 road miles west of Fairbanks. Just east of Manley Hot Springs, a branch of the Tofty Road (an “Omnibus” Road, FAS Route #6804), extends from the Elliott Highway north through the historic mining community of Tofty. The Tofty Road is owned and managed by DOT.

On June 1, 2012, DOT applied to NRO for a permit to conduct cross-country travel and geotechnical exploration for road and material site reconnaissance along state land between Tofty and Tanana. DOT received a permit for same, and reconnoitered possible routes and material sites in the summer of 2012 under LAS 28547. On December 12, 2012 DOT applied to

NRO for a public easement for portions of the proposed road from Tofty to Tanana. The project crosses land in a variety of ownerships, including Bean Ridge and Doyon Corporations, Tozitna Ltd., as well as federal and private. DOT's easement application sought an easement for the "middle" section of the route on State land not currently subject to a serialized easement. DOT is continuing negotiations with landowners for appropriate permissions for other sections of the route where authorizations (e.g. pursuant to the Alaska Omnibus Act) are not currently extant. In their application, DOT indicated that the road is being constructed to provide access to the community of Tanana.

Agency Review

A request for agency comment was sent on May 7, 2012, requesting comment by June 6, 2013, to the following agencies:

United States Army Corps of Engineers (COE)
Alaska Department of Fish & Game (ADF&G)
United States Bureau of Land Management (BLM)
DNR Division of Mining, Land and Water – Land Sales
DNR Division of Mining, Land and Water – Mining
State Historic Preservation Office
Alaska Department of Transportation (DOT)

The request was also sent on May 13, 2013 to DNR - Division of Forestry

United States Army Corps of Engineers (COE): Ellen Lyons commented that the "Regulatory Division is currently reviewing this project under our standard (individual) permit process. The final permit decision has not been made, and has the potential to effect the final route location."

DNR Response: The applicant is expected to secure any other necessary authorizations. As of the date of this decision, DNR has not received information indicating that the final route location will be altered as a result of Corps permitting requirements. The relevant COE permit application is POA-2013-050, for which public notice was conducted between March 21, 2013 and April 19, 2013. The final COE permit has not yet been issued. The applicant is expected to request appropriate adjustments to the final easement from DNR if needed.

ADF&G:

Marla Carter commented that "The proposed DOT route will cross several anadromous fish-bearing streams and will require numerous Fish Habitat permits from the Division of Habitat. The applicant has, and should continue to, work with Habitat staff to ensure that all permits are obtained prior to work done in or near streams. ADF&G has no other concerns with this project provided that public access will not be hindered in areas where existing use and trails occur. Trails should be temporarily rerouted, if necessary, and adequate public notice and signage should be required if access will be blocked for a prolonged period of time."

Brad Wendling commented that "The Alaska Department of Fish and Game, Division of Habitat, has no objections to this project. We will deal with the specifics of each water crossing design through our Title 16 permitting process."

DNR Response: The applicant is expected to secure any other necessary authorizations. As of the date of this decision, final permits from ADF&G had not yet

been issued. DOT advised DNR on 8/14/2013 that ADF&G has identified crossings requiring fish passage and made recommendations on avoidance and minimization of habitat issues. DOT expects no issues with permit delivery, but the permit has not yet been prepared. The early entry authorization will stipulate that operations must be conducted in a manner that will ensure minimum conflict with other users of the area. There shall be no interference with free public use of state lands and waters. Public access may only be temporarily restricted as necessary during construction activities to ensure public safety consistent with DOT construction requirements or as otherwise approved by the Authorized Officer. As necessary, notice may include, but is not limited to notice in the Fairbanks newspaper, posting in local communities and posting on 511.alaska.gov (or other method, if separately approved by the Authorized Officer).

DOT: John Bennett commented that “DOT&PF Northern Region Right of Way supports this application for a public ROW.”

DNR Response: Noted.

DNR Division of Forestry: Forestry expressed concern about insect outbreak as a result of the clearing and requested stipulations to mitigate the risk by, among other measures, ensuring timely removal of spruce.

DNR Response: DNR will include in the early entry authorization the stipulations provided by the Division of Forestry to protect the forestry values of the area. DNR has received information from Forestry indicating that DOT is amenable to the requested stipulations and that they are working together to mitigate the risk of insect outbreak.

DNR Division of Mining, Land and Water – Mining: DNR – Mining requested additional information regarding route location relative to placer mining operations. This information was provided by DOT and DMLW; no subsequent Mining Section comments were received.

No other agency review comments were received.

Public Notice

Public Notice was conducted from May 7, 2013 through June 6, 2013. Notice was provided by posting notice of the proposed action on May 7, 2013 to the State of Alaska public notice web page at dnr.alaska.gov/commis/pic/pubnotfrm.htm.

Notice was also provided via US Mail to:

City of Tanana PO Box 249 Tanana, AK 99777	Manley Hot Springs Community Association P.O. Box 107 Manley Hot Springs, AK 99756	Terry Russell P.O. Box 48 Manley Hot Springs, AK 99756
Native Village of Tanana P.O. Box 130 Tanana, AK 99777	Manley Hot Springs Village P.O. Box 105 Manley Hot Springs, AK 99756	Trabits Group, LLC P.O. Box 870404 Wasilla, AK 99687

Tozitna, Limited P.O. Box 129 Tanana, AK 99777	Bean Ridge Corporation P.O. Box 82062 Fairbanks, AK 99708	Donna Brady Robertson, Dustin Shoemaker and Coleen Nilsson 3250 Easy Street Fairbanks, AK 99701
George Seuffert, Jr. P.O. Box 10297 Fairbanks, AK 99710		

Notice was also provided via email on May 7, 2013 to Doyon, Ltd. at lands@doyon.com.

One comment was received. Trabits Group, LLC commented in pertinent part as follows:

“Trabits Group fully supports the construction of the road as planned and will be pleased to cooperate as required.”

DNR Response: Noted.

“The proposed route runs through Trabits Group State Mining Claim JG04 (ADL 617525). The mineral resource value contained within the requested easement is unknown at this time.”

DNR Response: Noted. DNR has been advised by DOT that they continue to work with Trabits to mitigate the impact on subsurface interests and DNR believes that DOT and Trabits will be able to come to an adequate resolution. Given the likely benefits of the improved transportation link to both the residents of Tanana and Alaskans generally, as well as the mining community in the area and Trabits itself, DNR considers issuance of the easement to be a reasonable concurrent use. Additional discussion regarding concurrent development is included in the Mineral Estate section of this decision.

“Trabits Group requests that access to the Trabits Group claim block be assured and not unreasonably restricted. Trabits Group recognizes the need to maintain roadway slopes and drainage but would be concerned with expensive side drainage culverts should such be required for claim block access.”

DNR Response: The early entry authorization will stipulate that operations must be conducted in a manner that will ensure minimum conflict with other users of the area. There shall be no interference with free public use of state lands and waters. Public access may only be temporarily restricted as necessary during construction activities to ensure public safety or as otherwise approved by the Authorized Officer. DOT has indicated that they will transition existing accesses into the travelled surface. Future access changes will be handled like any other public road.

Environmental Risk

There are minimal environmental risks associated with this proposed activity. Fuel, lubricants, and hydraulic fluids will be contained within the vehicles being operated for the project. A minor risk of release of these fluids to vegetation and water exists from hydraulic line breakage, leakage from the system, or equipment mishap.

This risk may be minimized by requirements described in the special stipulations attached to the early entry authorization, including *Fuel and Hazardous Substances, Operation of Vehicles, and Notification*

Construction and Survey

Construction: DOT plans to begin construction in 2013 and complete construction in 2014.

Survey: Upon completion of the road construction DOT shall submit an as-built survey for review by the DNR Statewide Platting Officer. DMLW will require a survey acceptable to the standards of the Division prior to the expiration of a Land Use Permit for early entry construction. Prior to construction, DOT shall contact Stan Brown of the Department of Natural Resources' Survey Section at (907) 269-8521 to obtain instructions.

Once this decision is approved, a Land Use Permit for early entry can be issued that authorizes construction and survey.

Performance Guaranty & Insurance

Per 11 AAC 96.060 (performance guaranty) and 11 AAC 96.065 (insurance) the requirements for a performance guaranty and insurance can be waived after considering the applicant's history of compliance and the potential risks to the State. Compliance by DOT&PF, a sister state agency, is justifiably expected and the risks from the proposed activity appear minimal. The requirements for a performance guaranty and insurance are therefore waived.

Compensation

The easement will be issued to DOT, a state agency. Pursuant to 11 AAC 05.010(c), the fee is waived for state agencies.

Term of Easement

This easement will be issued until no longer needed. In this instance, "no longer needed" means vacation, relinquishment, or abandonment. The term of the early entry permit for construction will be for 5 years.

Economic Benefit and Development of State Resources

Per 38.05.850(a), DMLW must consider whether this easement will provide direct and/or indirect economic benefits to the State, and whether it will encourage development of the State's resources. The easement will provide an improved transportation link to the Yukon River and the City of Tanana. This improved transportation link may increase the ease of mineral development en route, reduce transportation costs for City residents, and enhance the possibility of a more robust tourist industry for the area. This easement will likely provide direct and/or indirect economic benefits to the State and encourage development of the State's resources.

Discussion and Alternatives

In adjudicating an easement, DMLW seeks to facilitate development, conservation, and enhancement of state resources for present and future Alaskans, while minimizing disturbance to vegetation, hydrology and topography of the area that may impair water quality and soil stability.

The DNR/DMLW Northern Region Office reviewed the following alternatives:

- Alternative #1: Issue an early entry authorization and public easement to DOT.
- Alternative #2: No action alternative

Alternative #1 is the NRO's preferred alternative. Access to the City of Tanana is currently via air or river transportation links and a road represents a significant improvement to the transportation infrastructure, as summer access via short ferry and winter access via short ice road will thus be possible. The primary issues considered during adjudication were the impacts to traditional uses, the effect on mineral resource development, the impact on water quality, and what benefits would accrue to the state as a result of the easement. Agency and public comments were all neutral or positive, and where requests or concerns were raised, appropriate responsive stipulations will be included to protect the state.

DOT has requested an easement width of 300 feet. Lesser widths were not considered because providing 300 feet allows some flexibility in road placement if necessary for topographic concerns or to minimize impacts to wetlands or other values. Because the road will operate as an extension of the state highway system, lesser widths may not provide enough room for future upgrades if needed.

DOT has not applied for any material sales on state land either within or along the proposed easement, incidental or otherwise. Consequently, this decision does not decide whether sale and/or use of material is appropriate. Such a decision will be separately adjudicated if and when DOT makes such application.

Alternative #2 was rejected because it would do nothing to address responsible development of state natural resources by providing necessary access.

DECISION

Based on information provided by the applicant, inter-agency review and review of relevant planning documents, statutes, and regulations related to this application, it is the decision of the Alaska Department of Natural Resources, Division of Mining, Land and Water, Northern Region Office to issue an early entry authorization to DOT to allow for construction and survey of the easement and to issue a Final Public Easement to DOT pursuant to AS 38.05.850.

The associated early entry authorization is subject to the terms of this decision and the stipulations within the attached Land Use Permit (LUP). During the term of the LUP, periodic inspections may be conducted at the discretion of DNR to ensure permit compliance. The State of Alaska reserves the right to issue other compatible uses within this same area.

The file has been reviewed and found to be complete. It is the finding of the Northern Region Lands Manager, DMLW, that issuance of this easement provides responsible development of the

State's natural resources and protects the interest of public access. The final easement will be issued upon approval of the as-built survey.



Adjudicator

8/28/2013

Date



Northern Region Lands Manager

8.28.2013

Date

A person affected by this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received by **September 17, 2013**, and may be mailed or delivered to Dan Sullivan, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to **dnr.appeals@alaska.gov**. This decision takes effect immediately. If no appeal is filed by the appeal deadline, this decision becomes a final administrative order and decision on **September 28, 2013**. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

Attachments:

Attachment A: Right of Way Map Alaska Project No. 61759 dated 1/9/2013
Early Entry Authorization ADL 419886