

Regional Manager's Decision AS 38.05.850(a)
ADL 419216 – Public Easement – Eva Creek Access Roads
Golden Valley Electric Association

Proposed Action

Golden Valley Electric Association (GVEA) has applied to the DNR Division of Mining, Land and Water (DMLW), Northern Region Office (NRO) for a public access easement within the Eva Creek area for road construction/upgrade that would connect wind turbines and infrastructure to the Ferry Road system. This easement includes access for vehicle/equipment travel between turbine sites and for burial of power and communications cable adjacent to the proposed roadway. In addition, an easement will be necessary for an access road to a proposed communications site west of the Parks Highway.

The proposed easement consists of approximately 35,000 feet in length by 60 feet in width and contains approximately 48.21 acres of state land, more or less. This easement is a component part of GVEA's proposed 24.6 megawatt (MW) wind farm which will also include leasing and material sale contracts issued by the NRO.

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 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 51.010.

Administrative Record

The administrative record for the proposed action consists of this case file ADL 419216, and by reference, ADL 419221- the Ferry Road easement, ADL 418853 – the lease casefile, ADL 419234 - the material sale contract, LAS 24099 and LAS 25503 – meteorological towers, this decision, a memo from the Director of the DMLW dated 6/6/2011, limiting appeal and reconsideration request eligibility for those who meaningfully participate during the public notice process, and by reference, the 1991 Update for the Tanana Basin Area Plan (TBAP).

Location and Legal description

Geographic: The proposed access easement sites connecting the wind turbines/infrastructure are located on high ridgelines, approximately 15 miles northeast of Healy within the Eva Creek area. The easement for the communications site lies is west of the Parks Highway, approximately two miles northwest of Ferry. (See attached map)

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

Regional/Village Corporation: Within Doyon Regional Corporation but no corporation land is involved.

USGS Quad: Fairbanks (A-4) and (A-5)

Legal Description:

Easement:

Turbine site access roads: Within Sections 3, 4, 9-11, 14, and 15, Township 10 South, Range 7 West, Fairbanks Meridian. See Attachment A

Comm. Site 2 Access: A public easement approximately 1,569 feet in length by 60 feet in width, consisting of 2.16 acres, more or less, within Section 17, Township 10 South, Range 8 West, Fairbanks Meridian.

Title

GS 24, Patent # 1232740 issued July 29, 1963 for subject lands.

Planning and Classification

The proposed project area is located within Management Unit, Subregion 4M1, Rex Dome to Liberty Bell Mine – 1991 updated Tanana Basin Area Plan (TBAP).

TBAP states the management intent as "*State land in this unit is to be retained in public ownership for multiple use management. The emphasis is on subsurface resource development and maintaining fish and wildlife habitat.*" The primary surface use of the subject area is Minerals and Wildlife Habitat with a secondary use as Public Recreation.

Minerals: The subject area is blanketed by numerous mining claims. Private negotiations between GVEA and the claimholders are ongoing. These claims are prospects for a potential hard rock mining operation within the area. Claimholder concerns are that the wind farm infrastructure and roads could interfere with a potential mining operation. GVEA is entering agreements where they will be responsible for surface relocation of either wind turbines, buildings, or access roads should there be development of subsurface resources in these locations.

In addition, placer mining for gold and other minerals is present within the general area with mining operations located in several surrounding creek beds. These operations are situated at lower elevations, whereas the wind turbines/infrastructure and connecting road systems will be located on the higher ridgelines. The proposed easements are for public access will not preclude existing uses. Existing users may actually benefit from the upgraded and maintained infrastructure.

Current mining will not be impacted as all present activity is placer mining and exists in the lower creek areas while the wind project exists on the high ridgelines. The surrounding area is open for mineral exploration and these roads should not impede any exploratory activities. Should these roads impede actual development in the future, they may have to be moved at the applicant's expense.

As per AS 38.05.285, DNR manages state lands for multiple uses to the greatest extent consistent with public interest, and the issuance of this easement as proposed allows for concurrent surface and subsurface resource use and development.

Subject areas within R10S, T 7 and 8W, FM are open to mineral entry. Section 17, R10S, T8W, FM is open to mineral entry through Mineral Opening Order 907.

Wildlife Habitat: Much of the proposed road system already exists as road/trails but may need to be upgraded to support the project. Impact from habitat loss will be very minimal.

Public Recreation: Most public usage occurs during the fall moose hunting season. Access to the area is predominately by 4-wheelers. GVEA is aware of this situation and plans to keep access open should any road construction/upgrades occur at this time. A Traffic Safety Plan will be required within the early entry authorization stipulations.

Neither the classification or designation prevent the issuance of this easement.

Background

GVEA has been conducting wind energy studies on state land in the Eva Creek area since 2003 (LAS 24099 and LAS 25503). Meteorological towers have been placed at various locations on ridges within the area to collect wind data. The existing Ferry Road and trails provided ready access for equipment transport and construction of the existing towers.

In 2008 GVEA personnel and NRO managers had initial talks to discuss what actions would be necessary for GVEA to pursue the construction of a wind farm in the Eva Creek area. GVEA had tentatively decided that this area offered the best possibilities with the wind data they had collected. Another major factor was the existing network of roads and trails to feasibly access the area. GVEA was presented information by managers of what DNR would probably require in the form of leases, easements, permits and material sales.

During this period GVEA contracted out numerous informational and feasibility studies which included: Alaska Biological Research (ABR) – Avian Study and Wetlands Determination; Northern Land Use Research (NLUR) – Cultural Resources Survey, and Power Engineers – Geotechnical Evaluation and Resistivity Testing for Substation site

After several more informational gathering meetings, in April 2011, GVEA submitted formal applications to the NRO for a wind farm in the Eva Creek area, including leasing, easements and material sales.

This decision deals with the easement application ADL 419216 for access roads within the wind farm project area, connecting the turbine sites and infrastructure. ADL 419221 deals with the upgrade/realignment of the existing Ferry Road and will be adjudicated within a different Regional Manager's Decision.

ADL 419216 would allow for road construction/upgrade between the proposed 12 turbine sites/infrastructure and for burial of power and communications cables adjacent to the proposed roadway within the easement (See attached map). Construction will consist of widening existing roads and trails to 26 feet wide for the Central Access Road and 36 feet wide for the other access roads. This extra surface width is necessary to accommodate larger vehicles and a crane for construction of the wind turbines. The roads will be designed by a professional

engineer registered in Alaska. Drainage structures shall be adequate in size and number to maintain natural drainage patterns. They shall be properly located and maintained to prevent ponding and erosion.

The electric and communications cables connecting the turbines to a substation will be routed parallel and placed within five feet of the edge of constructed roads within the easement. A 34.5 Kilo-Volt (kV) underground power collection and communications system connecting each turbine to the substation will be buried along the access roads in three HDPE conduits.

In addition to the turbine access roads, GVEA proposes to construct an access road from the Parks Highway to a communications site, designated Comm. Site 2. The road would be approximately 1,500 feet in length and will be located directly adjacent to, and east of GVEA's 100 foot transmission line right-of-way (ADL 30788)..

A Preliminary Finding and Decision was issued by the NRO on July 15, 2011 for the proposed public and charitable lease (ADL 418853) and associated material sale (ADL 419234). On the same date a 30 day public notice, outlining the proposed project and four GVEA applications to DNR/DMLW, was sent out for public comment.

Agency Review

On May 12, 2011 as part of an overall submission of leasing, material sales and easement information packets for the project, this application was distributed to the following agencies for review:

Alaska Department of Fish & Game, Habitat Division (ADF&G)
State Historical Preservation Office (SHPO)
Alaska Army Corps of Engineers (ACOE)
Alaska Department of Conservation (ADEC)
ADEC Compliance Program
US Fish & Wildlife Service (USFWS)
DNR Division of Oil & Gas (DO&G)
Bureau of Land Management (BLM)
DNR Pipeline Coordinator's Office
Denali Borough
Alaska Department of Transportation (DOT)
Alaska Railroad (ARR)
DNR Division of Mining, Land and Water Section (DMLW)

Comments addressed here pertain specifically to this easement application. Comments pertaining to the lease or material sales are addressed within those Final Finding & Decisions.

ADF&G Habitat Division: "To minimize impacts on existing recreational hunters, we recommend that construction related activities associated with road construction not occur during the September harvest (September 1st to September 25th). Activities either before or after the September hunting season would have minor effect on existing use of the area. Post-construction use of the roads by GVEA for maintenance activities would likely be of insufficient magnitude to create future impacts on recreational uses."

DNR Response: Much of the proposed turbine access easement slated for upgrade, already exists as a network of roads and trails connected to the Ferry Road system. GVEA has acknowledged that these connecting road/trails receive heavy recreational use during the

September moose harvest season and does not intend to close access on the road, whether there be construction or operation, but short delays may be possible. GVEA is working out the schedule of construction and use in the area. Access will be maintained, but may be minimally impacted during hunting season. A Traffic Safety Plan will be submitted prior to any construction activities and will be addressed in the Early Entry Authorization (EEA) Special Stipulations.

DOT: “Northern Region ROW has no objections to this action. We are already coordinating the road relocation issues with DNR and GVEA.”

DNR Response: DNR will continue to work with DOT and GVEA regarding the road relocation issues. This action pertains to the upgrades to the Ferry Road system and will be addressed within ADL 419221.

SHPO: On August 24, 2011, SHPO issued a letter of “no adverse affect” to GVEA in reference to the Eva Creek Wind Project. This letter was contingent to GVEA’s buffering and avoidance of two sites identified in Material Source B. SHPO added that if any archaeological resources were discovered project wide, that immediate notification would be required.

DNR Response: Work stoppage and notification of SHPO will be stipulated within the EEA upon any discovery of archaeological resources during the project

Other agency comments were received from ADEC, DO&G, and USFWS but pertained to project components outside the scope of this easement decision. No other agency review comments were received. No other agency review comments were received.

Public Notice

Public Notice was conducted from July 16, 2011 through August 15, 2011 for all applications submitted by GVEA to the DNR for the Eva Creek Wind Farm Project, including ADL 419216 - turbine site access easement, ADL 419221- the Ferry Road easement, ADL 418853 – the turbine site/infrastructure lease, and ADL 419234 - the material sale contract. Because these actions are linked and are different parts of the same project, The NRO included all proposed actions in a single public notice document.

These decisions are all appealable. The lease and material sale decisions are are Best Interest Findings and affected parties must comment during the public notice period in order to be eligible to appeal (AS 38.05.035(i)). Easement decision, under AS 38.05.850, are not best interest findings and are by statute appealable by any affected party after issuance of the .850 decision. Because all these decisions are related to the Eva Creek Wind Project, the NRO requested and received concurrence from the Director, pursuant to 11 AAC 02.010(d), to consolidate the appeal requirements such that an affected party was required to participate in the public notice period and provide comments to have standing in order to appeal the right-of-way decisions.

Notices were published in the Fairbanks Daily News Miner, the Anchorage Daily News, and posted on the State of Alaska Public Notice Website. A notice, along with a request to post, was sent to the Healy, Anderson, Cantwell, Clear, Fairbanks, Nenana and Denali Park postmasters. Notice was sent to the Denali Borough and courtesy notice was sent to the Doyon Regional Corporation and nearby land/interest holders in the Ferry area. A notice of the final decisions will be sent to those who comment during the Public Notice comment period.

Eight comments were received though one entity responded with two separate comments. Five commenters supported the project to varying degrees while two objected.

Comments pertaining to the lease or material sales are addressed within the Final Finding & Decisions (FFD). Some of the comments received refer to the state's project permitting in whole which encompasses the lease, material sales and easements. As best possible, comments addressed here pertain specifically to this easement application.

GVEA, Renewal Energy Alaska Project, and the Ferry Community Corporation (FCC) fully support the wind project in whole. FCC had one exception to their full approval. They objected to proposed Material Source A (ADL 419234) which is the closest to the community. (This will be addressed in the material sale decision)

The Ferry Community Corporation (FCC) has given approval for the wind project with the exception of Material Source A which lies adjacent to a portion of the Ferry Road and is located within Sections 26 and 27, T10S, R8W, FM. The main reason for their objection is the location of a community artesian spring in Section 27 which might become polluted if site development occurred there. Other concerns were impacts to a nearby berry picking area, and noise/dust pollution to neighboring residents.

DNR Response:

In response to the FCC concerns and as a result of modifications to GVEA material site locations, DMLW NRO will not be issuing a material sale from Material Source A as in ADL 419234. Brice Inc., the main contractor hired by GVEA for the wind project, recently applied to the DMLW NRO for a land use permit (LAS 28218) to establish an equipment/supplies staging area, up to 14 acres, in support of construction of the Eva Creek Wind Farm Project. The pad will be located in Section 26, adjacent to the Ferry Road, but appears to be far enough away from the above concerns. FCC did not object to this proposed project when informed during a courtesy public notice.

One active miner within the Eva Creek area stated that he was not opposed to the project but requested "that access not be inconvenienced, also that no negative impacts be placed on current mining and exploration in the area."

DNR Response: If approved the DMLW NRO will be issuing a public access easement (ADL 419216) to GVEA for road construction/upgrade that would connect wind turbines and infrastructure to the Ferry Road system. This action will ensure access to all, whether it be miner's, recreationists, trappers, and hunters. It is GVEA's intention that all existing and newly constructed roads be kept open to public access.

While GVEA plans to keep road access open they acknowledge that short delays may be possible during the construction phase with upgrades to the Ferry Road system. The NRO will require GVEA to implement an approved traffic safety plan before early entry authorization. After construction is completed current access should be improved with upgrades to the existing Ferry Road system.

Current mining will not be impacted as all present activity is placer mining and exists in the lower creek areas while the wind project exists on the high ridgelines. The surrounding area is open for mineral exploration and the wind project should not impede any exploratory activities with the present drill sampling technology. In addition, the ground surface footprint from the wind turbines and substation are relatively small and dispersed through the area.

GVEA sent two comment letters. The first letter stated full support for issuance of the lease, material sale, and easements. The second letter referred to the ongoing negotiations for an agreement between GVEA and Boot Hill Gold, owners of active mining claims underlying the turbine site areas. GVEA believes the construction of the EVA Creek Wind Project is a reasonable concurrent use of the land owned by the state with underlying mining claims. In addition, the proposed road work will provide improved access to mining claims and increase the economic viability of the subsurface claims as it becomes easier to get equipment in the area for potential exploration and future development of a mine.

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 and final easement, including **Special Stipulations:**

- 11. Fuel and Hazardous Substances
- 12. Operation of Vehicles
- 16. Notification

Construction and Survey

Construction: GVEA plans to construct and upgrade a network of predominately existing roads/trails that would connect wind turbines and infrastructure to the Ferry Road system.

Survey: Upon completion of the road construction GVEA 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.

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

Performance Guaranty

A \$100,000 performance guaranty will be required during construction for ADL 418853, the project lease. NRO Lands has determined that the same guaranty will be used for this portion of the project as well.

Insurance

During the period of early entry authorization for construction/survey will be required to retain Commercial General Liability Insurance. This policy must have minimum coverage limits of **\$1,000,000** combined single limit per occurrence, and **\$2,000,000** annual aggregate with an Excess Liability Limit that is acceptable to the State of Alaska. The policy will be written on an "occurrence" form and will not be written as a "claims-made" form unless specifically reviewed and agreed to by the Division of Risk Management, Department of Administration. In addition,

GVEA must maintain Pollution Liability Insurance with a minimum limit of \$5,000,000 per occurrence, \$5,000,000 aggregate. The State must be named as an additional named insured on the policy with respect to the operations of the permittee on or in conjunction with the permitted premises, referred to as *ADL 419216*. No insurance will be required after issuance of the easement.

Compensation

Pursuant to 11 AAC 05.010(e)(12), for a public easement there is a one-time fee of \$50 per acre. Based on the projected 47.27 acres, the one-time fee would be \$2,400.

Term of Easement

The term of the public easement will be 25 years, consistent with the proposed lease term for the turbine sites and accessory structures and will be subject to review and the vacation process. The right-of-way may be extended if the need still exists. 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 benefits to the State, and whether it will encourage development of the State's resources. In 2010, the Legislature enacted House Bill 306 declaring its intent that the State obtain 50% of its electric generation from renewable and alternative energy sources by 2025. Wind energy is a renewable resource and the proposed project will benefit the State and Alaskans with increased energy independence and as responsible development of state resources.

This public easement is essential to the Eva Creek Wind Farm Project. The access roads will provide for the initial construction and ongoing operation/maintenance of the wind turbines.

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.

This easement is a component part of GVEA's proposed 24.6 megawatt (MW) wind farm which will also include leasing and material sale contracts issued by the NRO. Issuance of an EEA for the project lease will be required before either material sale or easement authorizations.

The GVEA Eva Creek Wind Energy project is one of the first large-scale, commercial projects of renewable wind energy in Alaska. GVEA has conducted wind energy studies since 2003 within the EVA Creek region on state land as permitted by DNR NRO. In addition, GVEA completed studies for local avian assessment, wetland determinations, cultural resources, geotechnical borings and soil resistivity assessment; all as necessary groundwork before formal submittal of project applications to the NRO.

Previous to GVEA's easement applications in 2011, NRO determined that the roads and powerlines within the lease area would be adjudicated as public easements instead of part of the lease. This action will allow continued public access within the area that will support wind

towers. The towers base area may be fenced off by GVEA but all interconnecting roads will be adjudicated as public easements to allow continued access.

GVEA has also applied to bury the interconnecting power and communications cables adjacent to the proposed roadway within the easement. By avoiding a string of above ground lines this action will eliminate bird collisions with wires.

Airstrips: There are two airstrips in the vicinity of this project. One, the Eva Creek Airstrip (2Z3) is an officially recognized landing strip that appears on the FAA charts and in the Alaska Supplement. A Form 7460-1 was filed with the FAA to determine if the turbines constituted a hazard to air navigation. As a result of this review, the FAA issued a "Determination- No Hazard to Air Navigation" on July 22, 2011 with the following conditions: "These ten (10) structures shall be marked with white paint and lighted as outlined in chapters 4, 12, & 143 (*turbines) of Advisory Circular (AC) 70/7460-1K." A Form 7480-1 was also filed to establish a non-standard approach pattern at 2Z3 that would keep all traffic south of the airport and away from the turbines. The Form 7460-1 Basis for Decision notes that "there are no IFR effects and the 2Z3 traffic pattern is being modified to keep all aircraft south of the runway". As a consequence of these actions on the party of the FAA, the Eva Creek Airport will remain open and usable. The second strip is a rudimentary landing area in the vicinity that is apparently used infrequently, if at all. There is decaying evidence that a wind sock and tie down were present in the distant past. This strip is currently unusable due to the presence of a met tower and will be unusable in the future due to its proximity to the wind farm infrastructure. Its unavailability does not constitute a hardship as evidenced by the lack of use and the relative proximity of 2Z3.

GVEA has submitted a Traffic Safety Plan for the road construction/upgrade of the Ferry Road and turbine site access roads. The Ferry Road is used by miners, recreationists, and heavily by hunters during the fall moose harvest season. GVEA recognizes this public usage and does not plan to block access at any time during construction or operation. However, there may be minor delays at times.

Within the plan GVEA requested there be no shooting within ¼ mile of all roadways under construction. The NRO understands the safety rationale for workers but cannot restrict hunting activities further than what's already restricted by state hunting regulations. Current regulations on hunting near roadways states that you may not take game by "shooting on, from, or across the drivable surface of any constructed road or highway." DMLW requested GVEA to revise the sign to match the hunting regulations.

GVEA had originally included a portion of the existing infrastructure in the area that had been upgraded by DOT in the 1970's, under the Ferry Upgrade Highway Project 6-27008 (Attachment C). While not technically part of the Omnibus road, the original Omnibus route appears to have been abandoned some time ago, and this new route has become primary access to the Liberty Bell Mine and beyond. Subsequently, DOT requested NRO to add this section to the Ferry Road easement, ADL 419221, that is to be issued to them. Both GVEA and this office concur this request makes sense. An easement segment length approximately 8,500 feet in length by 60 feet in width (Secs. 15, 22 and 23, T10S, R8W, FM) has been deleted from ADL 419216 and added to ADL 419221- the Ferry Road easement with an increase of ROW width to 100 feet.

In addition, a small segment of existing road, approximately ¼ mile in length within Section 14, T10S, R8W, FM) and not within any easement application, connects to the subject road section which reconnects to the Ferry-Eva-Moose Creek Road. This segment bisects Material Source G

as proposed by GVEA and will require a location survey. Though totally separate from the wind farm project, this segment will be added as an easement to ADL 419221 to provide continuity to DOT and its management of the Ferry Road system.

Much of the proposed road access within the Eva Creek area already exists as roadway that is driveable by truck or as an ATV trail. To the extent possible, roadways constructed under this authorization will follow these established routes, however it is recognized that they will deviate in places to accommodate the proposed loads. This office reserves the right to require construction of an apron or ramp from the new roadbed to the existing roadbed or points of interest, such as the Flying Dutchman.

The proposed easement term for the roads to GVEA along with the lease is 25 years. This term is subject to renewable if still desired for continuation of the wind farm project.

If the easement is not renewed by GVEA there seems to be significant historical public usage of this road network to retain as a public access easement. The DNR will evaluate this as part of the reclamation process.

Communications Site # 2 is located along the Parks Highway, approximately 8 miles west of the Eva Creek wind turbine site and is necessary for reliable project communications (Attachment B). The site will be adjudicated as part of the project lease (ADL 418853) and a 1500 foot long access road as a public easement (ADL 419216). The road paralleling the transmission line (ADL 30788) will be placed along the east side of the 100 foot ROW which has favorable dry soil conditions until it approaches the lease site. It will then cross under the transmission line to the west side. This new road location will allow other users to access state and private lands west of the Parks Highway at a DOT approved location. This easement will connect to an easement (ADL 409478) which allows for public access to the Ridge Rock Homestead Area. This easement should greatly improve access in to this area.

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

- Alternative #1: Issue a public easement for the proposed and existing trail/roads accessing wind turbine sites within the Eva Creek Area.
- Alternative # 2: Issue private exclusive easement for the proposed and existing trail/roads accessing wind turbine sites within the Eva Creek Area
- Alternative #3: Allow for all road access between wind turbine sites to be issued under a lease.
- Alternative #4: No action alternative

Alternative #1 is the NRO's preferred alternative. The trails and existing roads are used extensively at times by miners, recreationists and hunters. This area has an extensive history of public usage which should be recognized and protected. A public easement will allow for project access by GVEA between turbine/infrastructure on roadways while also permitting the public's usage of these routes.

A private exclusive easement would restrict travel within the wind farm area to GVEA. This action would not be in keeping with administering the State's public domain and the public's long history of access through out the area for mining, recreation, trapping, and hunting. Alternative #2 was rejected for these reasons.

Alternative #3 was initially considered as a viable option between GVEA and DMLW NRO managers but ultimately rejected for the reasons discussed under Alternative #1. It would not be in the best interests of the state or public to tie up more land than necessary under a lease.

Alternative #4 was rejected because it would do nothing to address responsible development of state natural resources and especially renewable energy. The development of viable wind energy will assist the Governor's goal of achieving 50% renewable energy by 2025.

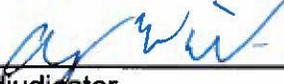
The uses proposed by GVEA are a reasonable concurrent use of state land. DNR recognizes that the mineral estate is dominant over the surface estate under Alaska law, however that does not mean that the surface is unavailable for any development. To the contrary, AS 38.05.255 specifically requires that the surface use of land within a mining property shall be subject to reasonable concurrent uses. AS 38.05.285 allows for multiple use management, thus allowing a surface use of state land where there is a subsurface interest. If irreconcilable conflicts arise, GVEA acknowledges that the subsurface estate is dominant and recognizes the potential for conflict with the surface use. If the development of a commercially viable mine conflicts with facilities installed as part of the Eva Creek Wind Project and they cannot be mitigated by reasonable accommodation by either party, then GVEA acknowledges that those conflicting facilities may have to be relocated at GVEA expense, per their August 25th, 2011 letter to DNR.

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 a Public Easement to GVEA pursuant to AS 38.05.850.

The associated early entry authorization will allow for construction and survey of the easement and is subject to the terms of this decision and the stipulations within this 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 through alternative energy and protects the interest of public access. The final easement will be issued upon approval of the as-built survey.



Adjudicator

9/23/11

Date



Northern Region Lands Manager

9.23.2011

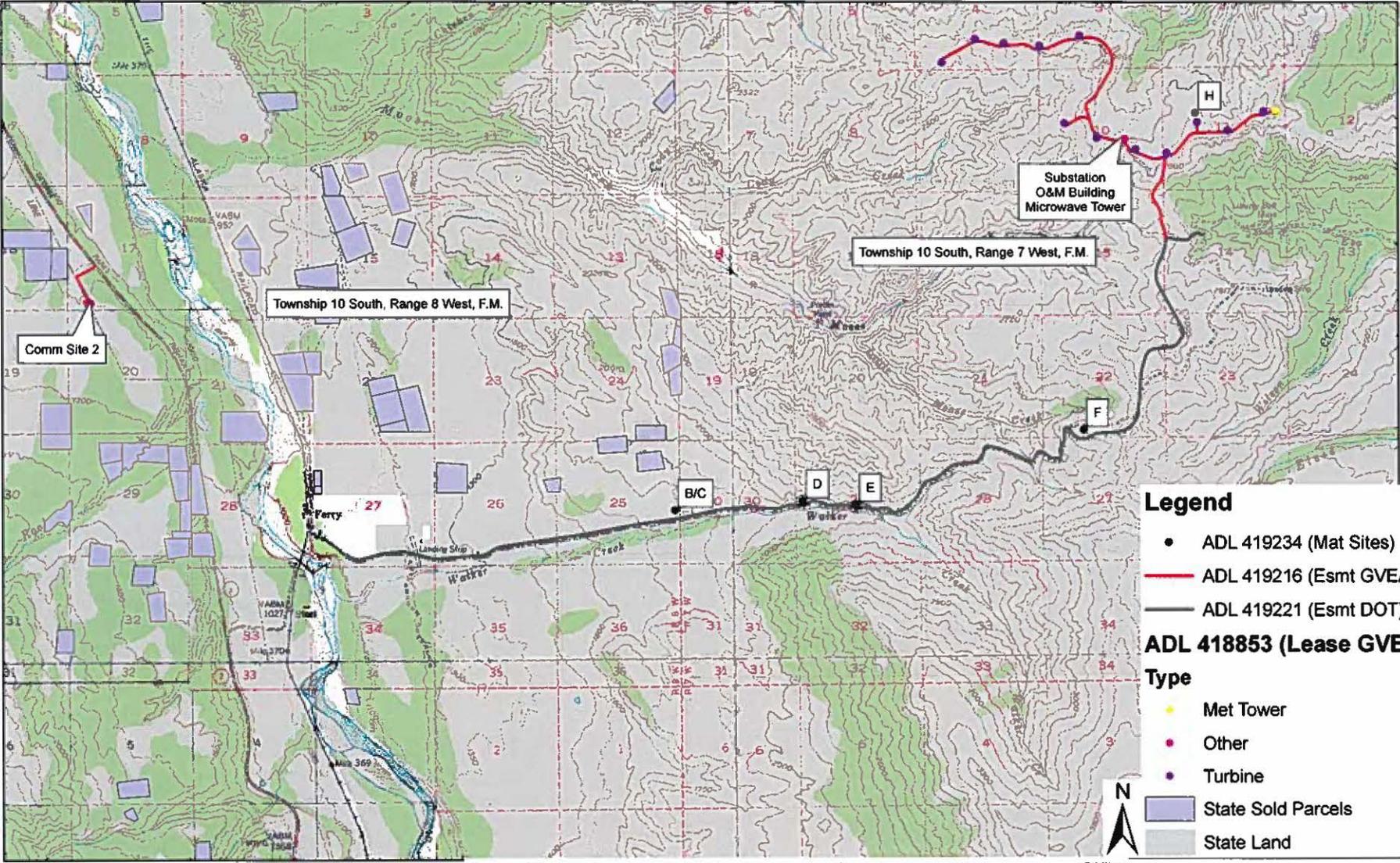
Date

A person affected by this decision who provided timely written comments or public hearing testimony may appeal it, in accordance with 11 AAC 02. Any appeal must be received by October 13, 2011 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 October 24, 2011. 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 (Ferry Road Location Map)
Early Entry Authorization**

Attachment A

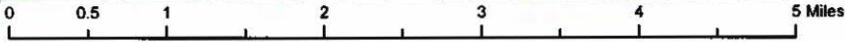


Legend

- ADL 419234 (Mat Sites)
- ADL 419216 (Esmt GVEA)
- ADL 419221 (Esmt DOT)
- ADL 418853 (Lease GVEA)**

Type

- Met Tower
- Other
- Turbine
- State Sold Parcels
- State Land





STATE OF ALASKA
Department of Natural Resources
Division of Mining, Land & Water

Early Entry Authorization
Under AS 38.05.850

ADL 419216

Golden Valley Electric Association, herein known as the permittee, is issued this Early Entry Authorization permit authorizing the use of state land and materials within:

Sections 3, 4, 9-11, 14, 15 Township 10 South, Range 7 West, Fairbanks Meridian

This permit is **effective beginning September 26, 2011 and ending September 25, 2016** unless sooner terminated at the state's discretion. This permit does not convey an interest in state land and as such is revocable with or without cause.

This permit is issued for the purpose of authorizing:

Construction, upgrade, realignment, and survey of the roads, and installation of underground powerlines, as shown on Attachment A

All activities shall be conducted in accordance with the following stipulations:

- 1. Authorized Officer.** The Authorized Officer (AO) for the Department of Natural Resources is the Regional Manager, or designee. The Authorized Officer may be contacted at 3700 Airport Way, Fairbanks, Alaska 99709 or 907-451-2740. The AO reserves the right to modify these stipulations or use additional stipulations as deemed necessary.
- 2. Valid Existing Rights.** This authorization is subject to all valid existing rights in and to the land under this authorization. The State of Alaska makes no representations or warranties whatsoever, either expressed or implied, as to the existence, number or nature of such valid existing rights.
- 3. Reservation of Rights.**
 - (a) The division reserves the right to grant additional authorizations to third parties for compatible uses on or adjacent to the land under this authorization.
 - (b) The division may require authorized concurrent users of state land to enter into an equitable operation or maintenance agreement.
 - (c) Authorized concurrent users of state land, their agents, employees, contractors, subcontractors, and licensees shall not interfere with the operation or maintenance activities of each user.
- 4. Compliance with Governmental Requirements; Recovery of Costs.** Permittee shall, at its expense, comply with all applicable laws, regulations, rules and orders, and the requirements and stipulations included in this authorization. Permittee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.
- 5. Alaska Historic Preservation Act.** Permittee shall consult the Alaska Heritage Resources Survey (907) 269-8718 so known historic, archaeological and paleontological sites may be avoided.

The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation shall be notified immediately at (907) 269-8720.

6. **Destruction of Markers.** All survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, and unsurveyed lease corner posts shall be protected against damage, destruction, or obliteration. The permittee shall notify the Authorized Officer of any damaged, destroyed, or obliterated markers and shall reestablish the markers at the permittee's expense in accordance with accepted survey practices of the Division of Land.
7. **Storage of Equipment.** Storing any materials or supplies after the dates of authorized use is specifically prohibited.
8. **Inspection.** Authorized representatives of the State of Alaska shall have reasonable access to the subject parcel for purposes of inspection.
9. **Violations.** This authorization is revocable immediately upon violation of any of its terms, conditions, stipulations, nonpayment of fees, or upon failure to comply with any other applicable laws, statutes and regulations (federal and state). Should any unlawful discharge, leakage, spillage, emission, or pollution of any type occur due to permittee's, or its employees', agents', contractors', subcontractors', licensees', or invitees' act or omission, Permittee, at its expense shall be obligated to clean the area to the reasonable satisfaction of the State of Alaska. A permittee who is charged and convicted of any violation of state hunting, trapping or fishing laws and regulations may be subject to revocation of this permit.
10. **Plan of Operations.** The development of the site authorized by this permit shall be limited to the area and improvements specified in the plan of operations submitted with the permittee's application dated **April 19, 2011** (as amended by updated plans dated **September 10, 2011**). The permittee is responsible for accurately siting development and operations within this area. Any proposed revisions to the plan of operations must be approved in writing by the Authorized Officer before the change in use or development occurs.
11. **Fuel and Hazardous Substances.** Secondary containment shall be provided for fuel or hazardous substances.
 - a. **Container marking.** All independent fuel and hazardous substance containers shall be marked with the contents and the Permittee's name using paint or a permanent label.
 - b. **Fuel or hazardous substance transfers.** Except for hand operated equipment, secondary containment or a surface liner must be placed under all container or vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fuel or hazardous substance transfers, where feasible and prudent. Appropriate spill response equipment must be on hand during any transfer or handling of fuel or hazardous substances to respond to a spill of up to five gallons. Transfer operations shall be attended by trained personnel at all times.
Vehicle refueling shall not occur below the ordinary high waterline of any waterbody. This restriction does not apply to water-borne vessels provided no more than 30 gallons of fuel are transferred at any given time.
 - c. **Storing containers within 100 feet of waterbodies.** Containers with a total capacity larger than 55 gallons which contain fuel or hazardous substances shall not be stored within 100 feet of a waterbody.
 - d. **Exceptions.** The Authorized Officer may under unique or special circumstances grant exceptions to this stipulation on a case-by-case basis. Requests for exceptions should be made to the Authorized Officer.
 - e. **Definitions.**
 - 1) **"Containers"** means any item which is used to hold fuel or hazardous substances. This includes tanks, drums, double-walled tanks, portable testing facilities, fuel tanks on small equipment such as light plants and generators, flow test holding tanks, slop oil tanks, bladders, and bags. Manifolder tanks or any tanks in a series must be considered as a single container. Vehicles, including mobile seismic tanks, are not intended to be included under this definition.

- 2) **"Hazardous substance"** is defined as (A) an element or compound which, when it enters into the atmosphere, or in or upon the water or surface or subsurface land of the state, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found; (B) oil; or (C) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).
- 3) **"Secondary containment"** means an impermeable diked area or portable impermeable containment structure capable of containing 110 percent of the volume of the largest container. Double-walled tanks do not qualify as secondary containment unless valves and piping are contained within the outer double wall.
- 4) **"Surface liner"** means any safe, non-permeable container (e.g., drip pans, fold-a-tanks, etc.) designed to catch and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume based on worst-case spill risk.
- 5) **Notification.** *The Permittee shall immediately notify DNR and DEC by phone of any unauthorized discharge of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons on land. All fires and explosions must also be reported to DNR. The DNR 24-hour incident notification number is (907) 451-2678; the Fax number is (907) 451-2751. The DEC spill report number is (800) 478-9300. DNR and DEC shall be supplied with all follow-up incident reports.*
- 6) **Remediation.** *Should any unlawful discharge, leakage, spillage, emission, or pollution of any type occur due to Permittee's, or its employees', agents', contractors', subcontractors', licensees', or invitees' act or omission, the Permittee, at its expense, shall be obligated to clean the area to the reasonable satisfaction of the State of Alaska.*

- 12. Operation of Vehicles** During equipment maintenance operations, the site shall be protected from leaking or dripping hazardous substances or fuel. The permittee shall place drip pans or other surface liners designed to catch and hold fluids under the equipment or develop a maintenance area by using an impermeable liner or other suitable containment mechanism.
- 13. Term.** The term of the public easement will be 25 years, consistent with the proposed lease term for the turbine sites and accessory structures and will be subject to review and the vacation process. The term of the permit for early entry for construction improvements will be for 5 years.
- 14. Site Maintenance.** The area subject to this authorization shall be maintained in a neat, clean and safe condition, free of any solid waste, debris or litter.
- 15. Survey.** The permittee shall submit an as-built survey acceptable to the standards of the Division of Mining, Land and Water prior to the expiration of this early entry authorization. The Division of Survey shall be contacted beforehand for survey standards.
- 16. Notification.** Permittee shall immediately notify DNR and DEC by telephone, and immediately afterwards send DEC a written notice by facsimile, hand delivery, or first class mail, informing DEC of: **any** unauthorized discharges of oil to water, **any** discharge of hazardous substances other than oil; and **any** discharge or cumulative discharge of oil greater than 55 gallons solely to land and outside an impermeable containment area. If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, Permittee shall report the discharge within 48 hours, and immediately afterwards send DEC a written notice by facsimile, hand delivery, or first class mail. Any discharge of oil, including a cumulative discharge, solely to land greater than one gallon up to 10 gallons must be reported in writing on a monthly basis. The posting of information requirements of 18 AAC75.305 shall be met. Scope and Duration of Initial Response Actions (18 AAC 75.310) and reporting requirements of 18 AAC 75, Article 3 also apply.
- The Permittee shall supply DEC with all follow-up incident reports. Notification of a discharge must be made to the nearest DEC Area Response Team during working hours: Anchorage (907) 269-7500, fax (907) 269-7648; Fairbanks (907) 451-2121, fax (907) 451-2362; Juneau (907) 465-5340, fax (907) 465-2237. The DEC spill report number outside normal business hours is (800) 478-9300.
- 17. Assignment.** This permit may be transferred or assigned with prior written approval from the Authorized Officer.

- 18. Site Restoration.** Upon expiration, completion, or termination of this authorization, the site shall be vacated and all improvements, personal property, and other chattels shall be removed or they will become the property of the state.
- 19. Public Access.** All 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.
- 20. Fire Prevention, Protection, and Liability.**
- a. **Liability.** The permittee shall take all reasonable precautions to prevent, control, and suppress forest, brush, and grass fires and shall assume full liability for fire suppression costs and any damages to state land resulting from escaped fire.
 - b. **Instruction.** Prior to construction, all personnel shall be instructed on fire protection measures, including these stipulations and the provisions of AS 41.15.010-.950 (Public Resources, Protection of Forested Lands) and 11 AAC 95.400-.490 (Forest Resources and Practices, Forest Fire Protection).
 - c. **Burning permit year-round.** The permittee shall obtain a burning permit before engaging in any burning under this authorization. Teck-Pogo shall notify, in accordance with the permit, the Delta Area Forestry Office before engaging in any large-scale burning (i.e., larger than a 10' by 10' pile) on a year-round basis, and before any burning, regardless of the size of the burn, from May 1st to September 31st. Burning permits may be obtained from the Delta Area Forestry Office. Any burning requiring notification to Delta Area Forestry shall be attended at all times.
 - d. **Fire danger level check.** From May 1st to September 31st, fire danger levels (Low, Moderate, High, Very High, and Extreme) shall be checked on a daily basis with the Delta Area Forestry Office at 895-4225.
 - e. **Cooking and warming fires.** From May 1st to September 31st, cooking and warming fires are prohibited except at the center of fire safe areas (such as mineral soil or gravel areas with a minimum size of 15' by 15') or with approved (by the Division of Forestry) cooking appliances/incinerators, which would prevent the escape of flying embers. Fires should be attended at all times and extinguished immediately after use. If the fire danger level reported by the Delta Area Forestry Office for this area is at High, Very High or Extreme, open flames, including debris burning, cooking and warming fires (including fires in fire-safe areas or with approved cooking appliances/incinerators), are prohibited under this authorization.
 - f. **Right-of-Way Clearing.** During Extreme conditions, right-of-way clearing shall be suspended.
 - g. **Equipment precautions.** All power saws, chain saws, brush cutters, vehicles, aircraft, and any other equipment with exhaust particles that might be exposed to forested land (land on which grass, brush, timber, and other natural vegetative material grows) shall be equipped with a spark-arresting device that complies with 11 AAC 95.480. Vehicles and aircraft used in forested land must have their exhaust manifolds far enough from forested ground to avoid igniting combustible material.
 - h. **Smoking materials.** Cigarettes, cigars, and other smoking materials are prohibited except for inside vehicles or at the center of areas that are fire safe. Fire safe areas are areas down to the mineral soil (whether cleared or naturally occurring) with a minimum size of 15' x 15'. Cigarette butts, cigar butts, and other smoking materials must be extinguished and dropped into the smoker's hand and felt for embers before being discarded into a suitable receptacle for the disposition or reception of burning material.
 - i. **Fire suppression tools and water on site.** From May 1st to September 31st, tools and water should be kept onsite to control any fire that may start on forested land. There should be 2 full backpack pumps (fedcos) for each work party, and each crewmember should have a hand tool (e.g., Pulaski, shovel, ax, etc.) and personal protective gear (at a minimum, gloves and a hardhat). Each crewmember operating a chainsaw or similar equipment should be equipped with a personal fire extinguisher.
 - j. **Communications.** Work crews shall have radios and/or cell phones capable of communicating with each work party and/or the Division of Forestry's Delta Area Dispatch. Uncontrolled fires shall be reported immediately to the Division of Forestry's Delta Area Dispatch at (907) 895-4227 (fire line).

- k. **Flares or fusees.** From May 1st to September 31st, flares or fusees are prohibited except for use as an emergency signaling device and then, only over fire safe areas (15' x 15' mineral soil).
- 21. Road Construction/Design.** A professional engineer registered in Alaska shall approve/stamp the road design and upgrade plans for ADL 419216. Drainage structures shall be adequate in size and number to maintain natural drainage patterns. They shall be properly located and maintained to prevent ponding and erosion.
- 22. Indemnification.** Permittee assumes all responsibility, risk and liability for all activities of permittee, its employees, agents, invitees, contractors, subcontractors, or licensees, directly or indirectly conducted in connection with this permit, including environmental and hazardous substance risks and liabilities, whether occurring during or after the term of this permit. Permittee shall defend, indemnify, and hold harmless the State of Alaska, its employees, and agents from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatever kind or nature, including all attorney's fees and litigation costs, arising out of, in connection with, or incident to any act or omission by permittee, its employees, agents, invitees, contractors, subcontractors, or licensees, unless the sole proximate cause of the injury or damage is the negligence or willful misconduct of the State or anyone acting on the State's behalf. Within 15 days, permittee shall accept any such cause or action or proceeding upon tender by the State. This indemnification shall survive the termination of the permit.
- 23. Performance Guaranty.** A performance guaranty of \$100,000 will be required for ADL 418853, the project lease. This performance guaranty will cover construction on this portion of the project.
- 24. Insurance.** The permittee shall secure or purchase at its own expense, and maintain in force at all times during the permit term for early entry authorization allowing construction and survey, the following policies of insurance to protect both the permittee and the permittor (the State, its officers, agents and employees). Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the permittee's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the Authorized Officer prior to occupancy. The certificate must provide for a 60-day prior notice to the State in the event of cancellation, nonrenewal or material change of conditions. Failure to furnish satisfactory evidence of insurance, or lapse of the policy, is material breaches of this permit and shall be grounds, at the option of the State, for termination of the permit. All insurance policies shall comply with, and be issued by, insurers licensed to transact the business of insurance under Alaska Statute, Title 21. No insurance will be required after issuance of the easement.
- Commercial General Liability Insurance:** Such policy shall have minimum coverage limits of \$1,000,000 combined single limit per occurrence, and \$2,000,000 annual aggregate with an Excess Liability Limit that is acceptable to the State of Alaska. The policy will be written on an "occurrence" form and will not be written as a "claims-made" form unless specifically reviewed and agreed to by the Division of Risk Management, Department of Administration. In addition, GVEA must maintain Pollution Liability Insurance with a minimum limit of \$5,000,000 per occurrence, \$5,000,000 aggregate. The State must be named as an additional named insured on the policy with respect to the operations of the permittee on or in conjunction with the permitted premises, referred to as ADL 419216.
- 25. Traffic Safety Plan.** GVEA shall administer a traffic safety plan approved by DMLW NRO before any construction/upgrade work to the Ferry Road. At a minimum the plan will require.
- Signage at the beginning of the Ferry Road near the Alaska Railroad, notifying the public of any constructions ahead and placement of signs elsewhere as necessary to ensure public safety.
 - Posting of signs at a reasonable distance above and below any significant construction area along the Ferry Road.

26. Compensation. Pursuant to 11 AAC 05.010(e)(12), for a public easement there is a one-time fee of \$50 per acre. Based on the projected 47.27 acres, the one-time fee would be \$2,400.

27. Corrective Work Actions and Violations.

- a. Directives. Directives may be issued for corrective actions that are required to correct a deviation from design criteria, project specifications, stipulations, state statutes, or state regulations. Work at the area subject to the Directive may continue while implementing the corrective action. Corrective action may include halting or avoiding specific conduct, implementing alternative measures, repairing any damage to state resources that may have resulted from the conduct, or other action as determined by DNR.
- b. Stop Work Orders. Stop Work Orders may be issued if there is a deviation from design criteria, project specifications, stipulations, state statutes, or state regulations and that deviation is causing or is likely to cause significant damage to state resources. Under a Stop Work Order, work at the area subject to the Stop Work Order may not resume until the deviation is cured and corrective action is taken. Corrective action may include halting or avoiding specific conduct, implementing alternative measures, repairing any damage to state resources that may have resulted from the conduct, or other action as determined by DNR.
- c. Revocation. This authorization may be revoked upon violation of any of its terms, conditions, stipulations, nonpayment of fees, or upon failure to comply with any other applicable laws, statutes and regulations (federal and state). A revocation may not become effective until 60 days after the Permittee has been notified in writing of the violation during which time the Permittee has an opportunity to cure any such violation.

28. Surface/Subsurface Use. The permittee acknowledges the existence of state mining claims that affect or may affect the land associated with the access easement. The permittee further acknowledges that this access easement is issued as a reasonable concurrent use of the surface estate, but that events subsequent to issuance of the early entry authorization for construction and final easement may result in an irreconcilable conflict between the uses allowed by the access easement and the development of the dominant mineral estate. In the event that happens, the permittee may be required to move, change, or completely remove its improvements, at its sole expense, and this access easement may be vacated in whole or part.

Advisory Regarding Violations of the Permit Guidelines. Pursuant to 11 AAC 96.145, a person who violates a provision of a permit issued under this chapter (11 AAC 96) is subject to any action available to the department for enforcement and remedies, including revocation of the permit, civil action for forcible entry and detainer, ejection, trespass, damages, and associated costs, or arrest and prosecution for criminal trespass in the second degree. The department may seek damages available under a civil action, including restoration damages, compensatory damages, and treble damages under AS 09.45.730 or 09.45.735 for violations involving injuring or removing trees or shrubs, gathering geotechnical data, or taking mineral resources.

If a person responsible for an unremedied violation of 11 AAC 96 or a provision of a permit issued under this chapter (11 AAC 96) applies for a new authorization from the department under AS 38.05.035 or 38.05.850, the department may require the applicant to remedy the violation as a condition of the new authorization, or to begin remediation and provide security under 11 AAC 96.060 to complete the remediation before receiving the new authorization. If a person who applies for a new authorization under AS 38.05.035 or 38.05.850 has previously been responsible for a violation of this chapter or a provision of a permit issued under this chapter, whether remedied or unremedied, that resulted in substantial damage to the environment or to the public, the department will consider that violation in determining the amount of the security to be furnished under 11 AAC 96.060 and may require the applicant to furnish three times the security that would otherwise be required.

The Authorized Officer reserves the right to modify these stipulations or use additional stipulations as deemed necessary. The permittee will be advised before any such modifications or additions are finalized. Any correspondence on this permit may be directed to the Department of Natural Resources, Division of Mining, Land and Water, Northern Region Office, 3700 Airport Way, Fairbanks, Alaska 99709-4699 telephone (907) 451-2740.

I have read and understand all of the foregoing and attached stipulations. By signing this permit, I agree to conduct the authorized activity in accordance with the terms and conditions of this permit.

Permittee	Title	Date
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Address	Phone	Contact Name
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Signature of Authorized State Representative	Title	Date
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