

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

**Proposed Noncompetitive Public and Charitable Use Conveyance to Applicant,
City of Wasilla**

**PRELIMINARY DECISION – AS 38.05.810(a)
ADL 231845**

Proposed Action, Non-competitive Conveyance: The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), has received an application for a disposal of state interest in a state-owned easement located in Section 8, Township 17 North, Range 1 West, Seward Meridian. The easement was issued in 1963 by the underlying private property owner to the State of Alaska Department of Fish and Game for the purposes of access to Lake Lucile and Lucile Creek exclusively for “those land and water uses pertaining to and necessary for projects undertaken by the Alaska Department of Fish and Game.” This easement was used by the state to construct a dam in the late 1960s. The city of Wasilla wishes to assume management responsibility for the dam at Lake Lucile and has applied to the Department of Natural Resources to acquire this easement interest pursuant to AS 38.05.810(a)(1) Public and charitable use. The Department of Fish and Game concurs with this proposed transfer of the easement interest. The land underlying the easement is state-owned lakebed and privately owned uplands. See Attachment A.

The public is invited to comment on this Preliminary Decision of the proposed non-competitive conveyance. **The deadline for comments is 5:00 PM Tuesday, March 4, 2014;** see page 8 for information on how to submit comments on this Preliminary Decision.

Related Action: The department proposes to waive the reversionary interest per AS 38.05.810(g), as further described below.

Authority: The applicable authorities include, but are not limited to, the following sections of Alaska Statute (AS):

AS 38.05.810(a) and AS 38.05.810(g). Public and charitable use

Administrative Record: The administrative record for the proposed action consists of the following case file: ADL 231845. Also incorporated by reference is LSH 50.

Scope of the Decision: The scope of this decision is limited to determining if the applicant and the subject easement qualify under the public and charitable use statute, if it is in the state’s best interest to dispose of the subject easement and if it is in the

state's best interest to dispose of the easement to the current applicant (city of Wasilla) pursuant to AS 38.05.810(a) Public and charitable use.

AS 38.05.810(a) authorizes the state to dispose of state land or resources for "less than the appraised value as determined by the director and approved by the commissioner to be fair and proper and in the best interest of the public..." The state has determined this access easement is a state resource. The department is proposing to dispose of a very limited state interest. Accordingly, the department proposes that it is in the state's best interest to convey this easement interest to the applicant for no consideration.

AS 38.05.810(g) requires the state retain a reversionary interest in a disposal for a public or charitable use under AS 38.05.810(a) unless this reversionary interest is waived by the commissioner on a finding that a waiver is in the state's best interest. In this case, the department proposes to waive the reversionary interest as it is in the state's best interest to do so.

Proposed Related Action: The following associated action will occur concurrently with the Final Finding & Decision: waiver of the reversionary interest.

Description:

Location: The easement is located in the SE1/4SW1/4 of Section 8, Township 17 North, Range 1 West, Seward Meridian. The location is further described as portions of Lots 20, 21 and 22 of Buena Vista Subdivision, filed as Plat #56 in the Palmer Recording District in 1958, adjacent to and underlying Lucile Lake and Lucile Creek within the city of Wasilla in the Matanuska-Susitna Borough. Actual physical access to the dam is by a road and trail situated north of and roughly parallel to Lucile Creek. The road, trail and dam are within the subject easement. Legal access to the easement is from Lake Lucile and from a platted right-of-way fronting Lots 20, 21 and 22. See Attachment A.

Geographic Features: Lots 20, 21 and 22 front on Lake Lucile. Available borough aerial imagery shows Lots 20 and 21 to be undeveloped with considerable tree coverage. Lot 22 is partially cleared and undeveloped. Lucile Creek flows from Lake Lucile through Lots 20, 21 and 22 northwesterly then to the southwest. Lake Lucile dam is situated on Lot 20. See Attachment A.

Potential Flood Hazard: The Flood Hazard Boundary Maps prepared by the Federal Emergency Management Agency designate Lake Lucile and Lucile Creek in the vicinity of the easement as Zone A-Special Flood Hazard Area subject to inundation by the 1% annual chance flood. See Flood Insurance Rate Maps (FIRMs) 02170C8060 and 02170C8080.

Municipality/Borough: The subject easement is located within the city of Wasilla in the Matanuska-Susitna Borough.

Native Regional/Village Corporations/Councils: The Native regional corporation is Cook Inlet Region, Inc. There is no Native village corporation nor is there a local traditional governing body for Natives in the vicinity of the subject easement.

USGS Map Coverage: The subject easement is located on USGS Quad Anchorage C-7 SW.

Legal Description: The legal description of the easement as contained in the Grant of Right-of-Way issued to the state is:

“Portions of Lots 20, 21 and 22 adjacent to, and underlying Lucile Lake, and Lucile Creek flowing through Buena Vista Subdivision located in Government Lot 4 which is a part of the SE1/4 of SW1/4 of Section 8, T17N, R1W, S.M, ,...”

Title:

Acquisition Authority/Title Status: The state acquired an easement interest with issuance of the Grant of Right-of-Way by the underlying property owner to the state of Alaska dated March 6, 1963. The applicable state case file is LSH 50.

Title Restrictions: Not applicable to this decision.

State Retained Interest: Not applicable to this decision.

Native Interest: The subject easement is within the boundaries of Cook Inlet Region, Inc. There are no Native interests identified with this easement.

School Trust Land: Not applicable to this decision.

Other Conflicts or Pending Interest: There are no third party interests of record that affect the subject easement.

Background: Property at the junction of Lake Lucile and Lucile Creek (Government Lot 4, SE1/4 SW1/4 of Section 8, Township 17 North, Range 1 West, Seward Meridian) was deeded by the federal government to Mr. Courtney Fleming on September 29, 1949. A portion of this property was subdivided in 1955 as Buena Vista Subdivision (filed June 6, 1958 as Plat #56, Palmer Recording District). Lots 20, 21 and 22 of Buena Vista Subdivision were conveyed to Allan and Jean Steel in 1958. The Steels issued a Grant of Right-of-Way to the state of Alaska, Department of Fish and Game, on March 6, 1963, recorded at Book 45, Page 286 of the Deed Books in the Historic Records of the Palmer Recording District. This grant was described as “Portions of Lots 20, 21 and 22 adjacent to, and underlying Lucile Lake, and Lucile Creek flowing through Buena Vista Subdivision...”. The grant was “limited exclusively to those land and water uses pertaining to and necessary for projects undertaken by the Alaska Department of Fish and Game.” In the latter part of the 1960s the Alaska Department of Fish and Game (ADF&G) constructed a dam on Lot 20.

In May of 2011 the DNR DMLW, Dam Safety and Construction Unit, determined the dam was not safe. Negotiations ensued between the city of Wasilla and the state wherein the city agreed to assume ownership of the dam if the state provided funding to the city to rehabilitate the dam to meet state standards. The city received funding in July, 2012; DNR issued a Certificate of Approval to Modify a Dam on October 23, 2012. The dam has been rebuilt by the city of Wasilla; construction was completed in June, 2013. The state issued a Certificate of Approval to Operate a Dam to the city of Wasilla on January 13, 2014.

The Certificate of Approval to Modify a Dam required that the city and owner of the property underlying the easement agree to a permanent easement for access to the dam for operation and maintenance and for the dam itself. For reasons beyond the state's control such an agreement could not be reached. The state therefore is proposing to convey its easement interest to the city of Wasilla to ensure the city can properly and efficiently operate and maintain the dam.

Actual physical access to the dam is by a road and trail situated north of and roughly parallel to Lucile Creek. The road, trail and dam are within the subject easement. Legal access to the easement is from Lake Lucile and from a platted right-of-way fronting Lots 20, 21 and 22.

Planning, Classification and Mineral Orders:

DNR Area and Management Plans: Not applicable to this decision.

Land Classification: Not applicable to this decision.

Coastal Issues: The subject easement is located within the Matanuska-Susitna Borough. The department will notify the Matanuska-Susitna Borough's coastal management program of this proposed action.

Riparian Area: Not applicable to this decision.

Mineral Order: Not applicable to this decision.

Local Planning: The city of Wasilla Comprehensive Plan was adopted by the Wasilla City Council on June 13, 2011. The plan acknowledges the importance to the city of the outstanding natural features present within the city, including numerous water features. The plan specifically notes the high values of Wasilla Lake and Lake Lucille. In the Community Assets section of the comprehensive plan, Goal 4 states: "Preserve and enhance the City's unique community assets." Objective 4.3 states: "Protect the City's natural resources, including Wasilla Lake and Lake Lucille." Objective 4.4 states: "Enhance access to natural areas", and Action 4.4.2 further states: "Work with landowners and other partners to enhance resident's access to Cottonwood Creek, Lucille Lake and Wasilla Lake, and to create a connected trail system that features overlooks and interpretive materials pertaining to these important community resources." Clearly Lake Lucille is viewed by the city of Wasilla as an extremely

important community asset. Rebuilding the Lake Lucile dam and safely operating and maintaining it are critical to achieving the pertinent goal and objectives of the comprehensive plan with respect to Lake Lucile.

Easements and Access: Access to the subject easement is from Lake Lucile and from a platted right-of-way fronting Lots 20, 21 and 22.

Access To and Along Public or Navigable Water: Not applicable to this decision.

Traditional Use Findings: A traditional use finding is not necessary because the subject easement is located within an organized borough.

Reservation of Mineral Estate: Not applicable to this decision.

Hazardous Materials and Potential Contaminants: Not applicable to this decision.

Performance Guaranties and Insurance: Not applicable to this decision.

Survey: Not applicable to this decision.

Compensation/Appraisal: Given the very limited nature of the state interest proposed for conveyance it has been determined to be in the state's best interest to convey the easement for no consideration.

Agency Review: Agency review was conducted from January 3 through January 17, 2014 on this proposed conveyance. No adverse comments were received nor were any issues raised.

Related Action: As noted above, AS 38.05.810(g) requires the state retain a reversionary interest in a disposal for a public or charitable use under AS 38.05.810(a) unless this reversionary interest is waived by the commissioner on a finding that a waiver is in the state's best interest. In this case, the department proposes to waive the reversionary interest as it is in the state's best interest to do so.

Conveying the easement interest with the reverter provision serves neither the best interests of the state nor the city of Wasilla. The city owns the dam and the easement is vital to the city's efficient operation and maintenance of the dam. Should the city obtain an alternative means of access to the dam and no longer need a portion of the easement as the primary means of access, exercising the reverter would not serve any useful public purpose as the dam is also within the easement. Continued city ownership of this easement provides a secondary access route.

Discussion: The city of Wasilla has submitted an application to the state of Alaska for the conveyance of an easement interest held by the state at the Lake Lucile damsite. The easement was originally issued in 1963 by the underlying private property owner to the Alaska Department of Fish and Game for access to the damsite for construction,

operation and maintenance purposes. In 2011, the dam was determined by the department to be in critical condition and in need of reconstruction to meet state safety standards. The city of Wasilla reached an agreement with the state wherein the city would assume ownership of the dam if the state funded construction of a new dam. Funding was secured in 2012 and the dam was completely rebuilt; construction was completed in 2013.

The department issued a Certificate of Approval to Modify a Dam on October 23, 2012. A condition of this Certificate required the city and private property owner agree to a permanent easement for operation and maintenance of the dam. However, an agreement could not be reached. Therefore, the state is proposing to convey its easement interest to the city of Wasilla for no consideration and to waive the reverter requirement.

Alternatives: The following alternatives were considered:

Alternative 1: Convey

Convey the easement interest as proposed in this decision. If determined to be in the best interest of the state, AS 38.05.810(a)(1) allows the state to convey a state resource to a political subdivision. Conveyance of the subject easement will meet an identified local public need and further stated goals and objectives of the city of Wasilla. City ownership of the easement is critical to the city's continued safe operation of the Lake Lucile dam. Retaining the easement in state ownership is not cost effective nor does it effectively meet local needs. The Department of Fish and Game supports the conveyance of the easement to the city. This alternative is clearly in the best interest of the state and is the preferred alternative.

Alternative 2: Retain

Retaining the easement in state ownership will require the state's continued management of the easement for access to a locally-owned facility for operation and maintenance purposes. Local ownership of the easement is a more effective means of achieving local goals than continued state ownership. This alternative is much less favorable than conveyance and is not preferred.

Recommendation: The proposed action, Alternative 1, is believed to be in the overall best interest of the state and is consistent with the requirements of AS 38.05.810(a). Alternative 1 meets an established community need and places management of the easement where it properly belongs-at the local level.

Stipulations: not applicable to this decision.

Proposed Action Approved for Public Review:

The proposed action may be in the best interests of the state and the Preliminary Decision is hereby approved to proceed to Public Notice in accordance with AS 38.05.945.

Prepared by:



Ed Busch, Natural Resource Specialist III
Land Sales and Contract Administration Section
Division of Mining, Land and Water

1/21/2014

Date of Signature

Concurred by:



Kathryn Young, Manager
Land Sales and Contract Administration Section
Division of Mining, Land and Water

1/21/2014

Date of Signature

Submittal of Public Comments: Pursuant to AS 38.05.945, the public is invited to comment on the proposed action in the Preliminary Decision and on the related, associated action to waive the reverter provision. Copies of the Preliminary Decision and the related action are available at the following locations:

1. Division of Mining, Land and Water, Land Sales and Contract Administration Section, 550 West 7th Avenue, Suite 640, Anchorage, AK 99501-3576;
2. The Department's Public Information Centers in Anchorage and Fairbanks, and the Southeast Land Office in Juneau;
3. The Department's website at www.dnr.alaska.gov/mlw/landsale/; or
4. by contacting Ed Busch by phone at (907) 269-8469, by email at edward.busch@alaska.gov, or by fax at (907) 269-8916.

Comments must be received in writing by the Division of Mining, Land and Water, Land Sales and Contract Administration Section, at the above address, by 5:00 PM Tuesday, March 4, 2014 in order to ensure consideration. All written timely responses will be considered. Written comments may be submitted by electronic mail, regular mail or facsimile.

Only persons who submit written comments during the public notice period will be eligible to file an administrative appeal of the Final Finding and Decision.

The state is prepared to accommodate individuals with disabilities who wish to participate in this review by providing auxiliary aids, services, or special modifications. Individuals who may need such assistance should contact the Department's Public Information Center in Anchorage between the hours of 10:00 am and 5:00 pm, Monday through Friday, at (907) 269-8400 by telephone or by TDD at (907) 269-8411; please call no later than Monday, February 24, 2014.

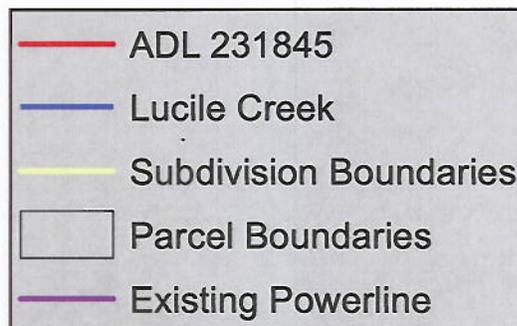
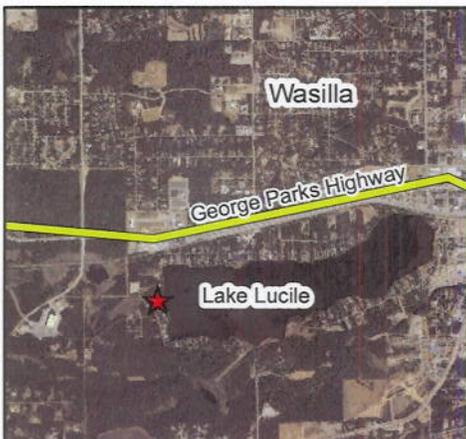


Attachment A: ADL 231845

City of Wasilla
Public & Charitable Use - AS 38.05.810(a)



Seward Meridian T17N, R1W, Section 8



This map is for graphic representation only. The locations of Lucile Creek, ADL 231845 and Powerline shown are approximate.

Map produced by
L. Quirk 1/16/2014



Attachment B: Area Land Status - ADL 231845

City of Wasilla - Lake Lucille Damsite Access Easement
Public & Charitable Use - AS 38.05.810(a)



Seward Meridian T17N, R1W, Section 8



	ADL 231845
	Lucille Creek
	Matanuska-Susitna Borough
	George Parks Highway
	Alaska Railroad

Note:
All parcels privately owned unless otherwise indicated

Map produced by
L. Quirk 1/2/2014

State of Alaska
Department of Natural Resources
Division of Mining, Land, and Water



Waiver of Reversionary Interest
AS 38.05.810(g)
ADL 231845

Proposed Action:

The city of Wasilla has submitted an application for the conveyance of a state-owned easement interest at the Lake Lucile damsite pursuant to AS 38.05.810(a)(1). This easement was originally granted in 1963 by the underlying private property owner to the Alaska Department of Fish and Game to permit access to the dam for operating and maintenance purposes. The purpose of this document is to waive the reversionary interest for this conveyance pursuant to AS 38.05.810(g) and determine that the waiver is in the state's best interest.

Legal Description:

The legal description of the easement as contained in the Grant of Right-of-Way is:

“Portions of Lots 20, 21 and 22 adjacent to, and underlying Lucile Lake, and Lucile Creek flowing through Buena Vista Subdivision located in Government Lot 4 which is a part of the SE1/4 of SW1//4 if Section 8, T17N, R1W, S.M.”

Discussion:

The city of Wasilla has submitted an application to the state of Alaska for the conveyance of an easement interest held by the state at the Lake Lucile damsite. The easement was originally issued in 1963 by the underlying private property owner to the Alaska Department of Fish and Game for access to the damsite for operation and maintenance purposes. In 2011, the dam was determined by the department to be in critical condition and in need of reconstruction to meet state safety standards. The city of Wasilla reached an agreement with the state wherein the city would assume ownership of the dam if the state funded construction of a new dam. Funding was secured in 2012 and the dam was completely rebuilt; construction was completed in 2013.

The department issued a Certificate of Approval to Modify a Dam on October 23, 2012. A condition of this Certificate required the city and private property owner agree to a permanent easement for operation and maintenance of the dam. Physical access to the dam is by a road and trail located to the north of and roughly parallel to Lucile Creek. The road, trail and dam are within the easement. For reasons beyond the state's control such an agreement could not be reached. Therefore, the state is proposing to convey its easement interest to the city of Wasilla. Retaining the easement in state ownership is not cost effective nor does it effectively meet local needs. Conveying the easement interest with the reverter provision is also not in the state's best interest as doing so serves neither the state nor the city of Wasilla. Should the city obtain an

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alternative means of access to the dam and no longer need a portion of the easement, exercising the reverter would not serve any useful public purpose. Retaining the easement in city ownership provides a secondary means of access should one be needed.

AS 38.05.810(g) stipulates “The commissioner shall retain a reversionary interest on each sale or other disposal granted under (a) or (e) of this section. The commissioner may waive the reversionary interest on a written determination that the waiver is in the public interest...”

Accordingly, the Final Finding and Decision issued XXXX, XX 2014 recommended that the reversionary interest be waived as authorized by AS 38.05.810(g).

Determination:

The director, as delegated by the commissioner, has determined it is in the public interest to waive the reversionary interest for the conveyance of the easement interest in ADL 231845.

Brent Goodrum, Director
Division of Mining, Land and Water
Alaska Department of Natural Resources

Date of Signature