



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Anchorage Field Office
4700 BLM Road
Anchorage, Alaska 99507-2591
<http://www.blm.gov/ak>

Municipal Light and Power Driveway Access Authorization Environmental Assessment, DOI-BLM-AK-A010-2013-0002-EA

Case File, AA-093308

DECISION RECORD

Background

Municipal Light & Power (ML&P), a public electric utility in Anchorage, Alaska, has requested a long-term right-of-way authorization from the Bureau of Land Management (BLM) to allow access across Federal lands to the George M. Sullivan Power Plant (Plant 2) facility, located on Municipality of Anchorage lands adjacent to Joint Base Elmendorf-Richardson (JBER). See the attached Environmental Assessment (EA), pages 3-5, for an additional explanation of the land status and ownership pattern in the project vicinity.

JBER, a joint U.S. Army and U.S. Air Force military base, is a former parcel of Federal land withdrawn from the public domain for administrative use by the Department of Defense by Executive Order 8102 on April 29, 1939. The BLM retains interest in the stewardship of the transferred lands and is responsible for reviewing and authorizing activities proposed for non-military purposes with concurrence from the military.

Pursuant to the Federal Land Policy and Management Act (FLPMA), the BLM has a responsibility to respond to requests for access across public lands. Prior to issuing a new right-of-way authorization, applications must be analyzed pursuant to the National Environmental Policy Act (NEPA). The BLM Anchorage Field Office has prepared an EA to understand and evaluate the potential environmental impacts of the proposed action.

Decision

It is my decision to implement *Alternative 2: Proposed Action – East Driveway*, as described in the attached EA, including all project design features listed therein as well as in the grant stipulations attached to my decision.

Specifically, it is my decision to authorize a 20-year right-of-way authorization to ML&P to:

1. Use the existing West Oilwell Road and Access Road as shown on “Figure 2: Location Map” in the EA appendices, and

2. Construct a new 85-foot by 40-foot driveway from the Access Road to the ML&P parcel across Federally managed lands as shown on “Figure 2: Location Map” in the EA appendices and consistent with the description provided in the EA (pp. 7-9).

This decision is based on site-specific analysis in the *Municipal Light and Power Driveway Access Authorization, Environmental Assessment* (DOI-BLM-AK-A010-2013- 0002-EA) and the management decisions contained in the Ring of Fire Approved Resource Management Plan and Record of Decision (March 2008). The attached Finding of No Significant Impact (FONSI) indicates that the selected alternative has been analyzed in an EA and has been found to have no significant environmental effects. Therefore, an Environmental Impact Statement is not required and will not be prepared.

Rationale for the Decision

Alternatives 1 and 3, the No Action and Access to Southeast Driveway alternatives, were not selected because they would not meet the BLM’s purpose for action nor would it meet the BLM’s right-of-way authorization objectives identified at 43 CFR § 2801.2. In the case of Alternative 3, this alternative would have required considerably more disturbance than the Proposed Action alternative and at a greater expense to a public utility (EA, p. 9).

Alternative 2 was selected because it fulfills the BLM’s right-of-way objectives to grant rights-of-way in a manner that protects the natural resources, and prevents unnecessary or undue degradation to public lands. Furthermore, the EA has demonstrated that the right-of-way authorization can be granted and utilized in a manner that protects the natural resources and prevents unnecessary and undue degradation of the public lands (EA, p. 5) (43 CFR § 2801.2).

Laws, Authorities, and Land Use Plan Conformance

The EA and supporting documentation have been prepared consistent with the requirements of various statutes and regulations, including but not limited to (EA, p. 6):

- Clean Water Act of 1977
- Clean Air Act of 1970, as amended
- National Environmental Policy Act of 1969, as amended
- Section 106 of the National Historic Preservation Act of 1966, as amended
- Archaeological Resources Protection Act of 1978
- Executive Order 12898, Environmental Justice
- Endangered Species Act of 1973, as amended
- Bald and Golden Eagle Act of 1940, as amended
- Migratory Bird Treaty Act, as amended
- Executive Order 13186
- BLM Alaska Invasive Species Management Policy 2010

The Proposed Action is in conformance with the Ring of Fire Approved Resource Management Plan and Record of Decision (March 2008) (EA, pp. 5-6).

Public Involvement, Consultation, and Coordination

Consultation and coordination efforts for this project are documented in Section 4.0 of the EA as well as in the appendices to the EA.

Appeal Opportunities

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR § 4. To appeal you must file a notice of appeal at the BLM Anchorage Field Office, 4700 BLM Road, Anchorage, Alaska 99507, within 30 days from receipt of this decision. The appeal must be in writing and delivered in person, via the United States Postal Service mail system, or other common carrier, to the Anchorage Field Office as noted above. *The BLM does not accept appeals by facsimile or email.* The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR § 4.21 (58 FR 4939, January 19, 1993) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. Except as otherwise provided by law or other pertinent regulation, a petition for a stay of decision pending appeal shall show sufficient justification based on the following standards: (a) The relative harm to the parties if the stay is granted or denied, (b) The likelihood of the appellant's success on the merits, (c) The likelihood of immediate and irreparable harm if the stay is not granted, and (d) Whether the public interest favors granting the stay.

Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the Office of the Solicitor (see 43 CFR § 4.413); Office of the Regional Solicitor, Alaska Region, U.S. Department of the Interior, 4230 University Drive, Suite 300, Anchorage, Alaska 99508; at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

/s/ Alan Bittner

August 7, 2013

Alan Bittner
Anchorage Field Manager

Date

Attachments

Exhibit A: Terms and Stipulations for Right of Way Grant AA-093308

Exhibit B: Additional Environmental Protection and/or Mitigation Measures for Right of Way Grant AA-093308

BLM. 2013. Finding of No Significant Impact (FONSI). Municipal Light and Power Driveway Access Authorization. DOI-BLM-AK-A010-2013-0002-EA

EXHIBIT A
Terms and Stipulations for Right of Way Grant AA-093308
Municipal Light and Power Access Road

I. General Terms

During construction, operation, maintenance, and termination of the project you must:

- a) Comply with all existing and subsequently enacted, issued, or amended Federal laws and regulations and state laws and regulations applicable to the authorized use;
- b) Do everything reasonable to prevent and suppress wildfires on or in the immediate vicinity of the right-of-way area;
- c) Not discriminate against any employee or applicant for employment during any phase of the project because of race, creed, color, sex, or national origin. You must also require subcontractors to not discriminate;
- d) Pay monitoring fees and rent (if applicable) as described in 43 CFR § 2805.16 and 43 CFR § 2806;
- e) If BLM requires, obtain, and/or certify that you have obtained, a surety bond or other acceptable security to cover any losses, damages, or injury to human health, the environment, and property in connection with your use and occupancy of the right-of-way, including terminating the grant, and to secure all obligations imposed by the grant and applicable laws and regulations. If you plan to use hazardous materials in the operation of your grant, you must provide a bond that covers liability for damages or injuries resulting from releases or discharges of hazardous materials. BLM may require a bond, an increase or decrease in the value of an existing bond, or other acceptable security at any time during the term of the grant;
- f) Assume full liability if third parties are injured or damages occur to property on or near the right-of-way as specified in 43 CFR § 2807.12;
- g) Comply with project-specific terms, conditions, and stipulations, including requirements to:
 - i. Restore, revegetate, and curtail erosion or conduct any other rehabilitation measure BLM determines necessary;
 - ii. Ensure that activities in connection with the Lease comply with air and water quality standards or related facility siting standards contained in applicable Federal or state law or regulations;
 - iii. Control or prevent damage to:
 1. Scenic, aesthetic, cultural, and environmental values, including fish and wildlife habitat;
 2. Public and private property; and
 3. Public health and safety;
- h) When the state standards are more stringent than Federal standards, comply with state standards for public health and safety, environmental protection, and siting, constructing, operating, and maintaining any facilities and improvements on the right-of-way; and
- i) Immediately notify all Federal, state, tribal, and local agencies of any release or discharge of hazardous material reportable to such entity under applicable law. You must also notify BLM at the same time, and send BLM a copy of any written notification you prepared;

- j) Not dispose of or store hazardous material on your right-of-way, except as provided by the terms, conditions, and stipulations of your grant;
- k) Certify your compliance with all requirements of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 et seq., when you receive, assign, renew, amend, or terminate your grant;
- l) Control and remove any release or discharge of hazardous material on or near the right-of-way arising in connection with your use and occupancy of the right-of-way, whether or not the release or discharge is authorized under the grant. You must also remediate and restore lands and resources affected by the release or discharge to BLM's satisfaction and to the satisfaction of any other Federal, state, tribal, or local agency having jurisdiction over the land, resource, or hazardous material;
- m) Comply with all liability and indemnification provisions and stipulations in the grant;

II. Stipulations

- a) Wastewater must be managed in accordance with Title 18 Alaska Administrative Code, Chapter 72, (18 AAC 72) Wastewater Disposal. Wastewater is defined as Human Waste (sewage), and Gray Water (water which has been used for personal hygiene, washing clothing or equipment, or sanitizing cooking and eating materials). If the standards for Pit Privies found at 18 AAC 72.030 cannot be met, all wastewater must be collected and transported to a state approved disposal facility. Upon closure of the campsite the Pit Privy must be completely backfilled with the surface area covered and re-graded to approximate original appearance;
- b) Non-Hazardous Solid Waste (trash/refuse) will be back hauled from the area and disposed in an approved waste disposal site;
- c) Fuel Handling and Storage: Fuel shall be stored at least 150 feet from surface waters. Fuel and other petroleum products and hazardous materials shall be stored in containers designed to hold that product, identified with the owner's name, the contents and date of purchase (e.g. NSEDC, Coleman Fuel, 2006). All fuel spills will be cleaned up immediately, taking precedence over all other matters, except the health and safety of personnel. Spills will be cleaned up utilizing absorbent pads or other Alaska State DEC approved methods. Fuel storage in excess of 55 gallons and/or fuel storage containers that are situated where a spill may reach a water body or watercourse requires secondary containment. Secondary containment is defined as a diked, impermeable impoundment capable of containing 110 percent of the volume of the largest independent container. As soon as possible, but not later than 24 hours, notice of any such discharge as defined in Alaska Statute Title 18, Chapter 75, Article 2, will be given to: The Authorized Officer at 1-800-437-7021. Such other Federal and State officials as are required by law to be given such notice including Alaska Department of Environmental Conservation at (907) 478-9300;
- d) All operations shall be conducted in such a manner as to avoid damage or disturbance to any prehistoric or historic sites or modern camp sites. The Archaeological Resource Protection Act prohibits the excavation, removal, damage, or disturbance of any archaeological resource located on public lands. Violation of this law could result in the imposition of both civil and criminal penalties of the violator. Should any historic or

prehistoric site be located during the course of operations under this Right of Way Grant, the applicant shall immediately cease activities and notify the BLM authorized officer;

- e) Protection of Survey Corner and Boundary Line Markers
 - i. Evidence of the Public Land Survey System (PLSS) and related Federal property boundaries will be identified and protected prior to commencement of any ground-disturbing activity. This will be accomplished by contacting BLM Cadastral Survey to coordinate data research, evidence examination and evaluation, and locating, referencing or protecting monuments of the PLSS and related land boundary markers from destruction. In the event of obliteration or disturbance of the Federal boundary evidence the responsible party shall immediately report the incident, in writing, to the Authorizing Official. BLM Cadastral Survey will determine how the marker is to be restored. The responsible party shall pay for all survey, investigation, penalties, and administrative costs.

- f) Non-Native Invasive Plant Prevention and Mitigation
 - i. All vehicles, transport equipment used in access, construction, maintenance and operations of project must be thoroughly cleaned prior to moving equipment across or onto BLM managed lands. Washing and/or brushing equipment to remove material that can contain weed seeds or other propagates helps to insure equipment that is being transported across or onto BLM managed lands are weed and weed seed free. High pressure washing is recommended to treat the insides of bumpers, wheel wells, undercarriages, inside belly plates, excavating blades, buckets, tracks, rollers, drills, buckets, shovels, any digging tools, etc., to remove potential weeds, seeds, and soil carrying weed propagules, and vegetative material.
 - ii. Early detection, rapid response mitigates ecological damage from invasive species. Should a development or occupancy and use have invasive plant infestations prior to development or use, proponents must confer with the land administrator to develop an invasive plant treatment plan to eliminate and/or prevent the propagation of the species.
 - iii. Site reclamation must be implemented as soon as possible after construction using the original duff layer. This original duff layer is to be removed and set aside upon initial site disturbance, and replaced on disturbed areas in lieu of revegetation with non-local materials.
 - iv. Certified weed-free mulch, hay or straw is required in areas needing mulch. Sources for weed free mulch can be found by calling the Plant materials Center: 907-7 45-4469. Revegetation Guidance can be found at: http://www.dnr.state.ak/ag/pmcweb/PMC_reveg
 - v. Useful websites:
Homer Soil and Water Conservation District
<http://www.homerswcd.org/invasives/invasivepg.htm>

US Department of Agriculture & Alaska Natural Heritage Program

<http://akweeds.uaa.alaska.edu/>

USDA Natural Resources Conservation Service
<http://plants.usda.gov/java/noxiousDriver>

US Fish and Wildlife Service
<http://www.fws.gov/invasives/>

Alaska committee for Noxious and Invasive Plants Management
<http://www.uaf.edu/ces/cnipm/>

g) The United States shall retain all rights stated in 43 CFR § 2805.15.

EXHIBIT B
Additional Environmental Protection and/or Mitigation Measures
for Right of Way Grant AA-093308
Municipal Light and Power Access Road

I. Additional Environmental Protection and/or Mitigation Measures

1. The driveway will be gated and secured. Only authorized ML&P personnel/contractors will be allowed. Traffic will consist of ML&P maintenance vehicle and trucks, less than 20 trips per day.
2. Vegetation clearing limits will be flagged prior to commencing construction activity.
3. Construction will take approximately two weeks, with clearing completed before May 1, 2013 or after July 15, 2013 to comply with the Migratory Bird Treaty Act.
4. Vegetation clearing will be completed in accordance the U.S. Fish & Wildlife Service, Vegetation Clearing Guidelines.
5. All equipment storage, construction staging areas, and refueling will be accommodated on ML&P property. No equipment storage, material storage, maintenance, or refueling will occur on Federal lands.
6. Construction equipment will be standard and generally consist of backhoe/front end loaders, dump trucks, bulldozers, and graders.
7. All debris will be hauled off-site and disposed of at a permitted facility.
8. All cut and fill slopes will be graded and contoured to prevent erosion and excessive runoff. All disturbed areas will be top soiled and seeded with native vegetation, as soon as practicable.
9. The Contractor will be required to submit a Stormwater Pollution Prevention Plan (SWPPP) to the Municipality of Anchorage prior to construction.