

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



Regional Manager's Decision
ADL 416407 – Mark A. Ames Easement Application

Proposed Action

Mark A. Ames has applied for a public access easement to access his Olnes West subdivision parcel. Currently, legal access for this subdivision exists via a dedicated platted road right of way, Treasure Street, and reserved access easements north and south of the subdivision, ADL 403433. Mr. Ames, however, requests an alternative route. The easement would begin at the point where the section line between section 26 and section 25 of FM T3N R1W departs from Treasure Street. The easement would follow the section line for approximately 970' to the point where the boundary between tract C and block 1 of ASLS 81-38 departs in a NW direction from the section line, following this boundary for approximately 1800' until it intersects with lot 12 of block 1, Mr. Ames' parcel. The proposed easement would be approximately 2770' long, 30' wide, and contain approximately 2 acres. See attachment A.

This decision finds that it is not appropriate to approve this request, as the platted subdivision route provides the greatest economic benefit to the state and the development of its resources.

Scope of Decision

The scope of this decision is to determine if it is appropriate to issue an easement after a review of the application, all relevant materials, agency and public comments, and a field inspection. This decision does not address material sale authorizations for gravel acquisition.

Authority

This easement application is being adjudicated pursuant to AS 38.05.850(a) (Permits) and 11 AAC 51.015 (Standards for Public Easements).

Administrative Record

The administrative record for the proposed action consists of ADL 416407, the current case file; ADL 408236, block 1, lot 12 Olnes West Subdivision parcel; ADL 403433, public access easement for Olnes West Subdivision; LAS 22842 (closed), Land Use Permit to upgrade access on ADL 403433; ASLS 81-38, the Olnes West Subdivision survey; and this decision.

Location and Legal Description

Geographic: An easement approximately 2770' long, 30' wide, containing approximately 2 acres, which begins at the point where the section line between section 26 and section 25 of FM T3N R1W departs from Treasure Street, then follows the section line for approximately 970' to the point where the boundary between tract C and block 1 of ASLS 81-38 departs in a NW direction from the section line, and then follows this boundary for approximately 1800' until it intersects with lot 12 of block 1.

Legal Description: Fairbanks Meridian, Township 3 North, Range 1 West, section 26 E ½

USGS Map: Livengood A-2
Borough: Fairbanks North Star Borough
Coastal District: None
Regional Corp: Doyon Ltd. Region

Title

The State received title to this land by General Grant GS 566; Patent (# 50-91-0150) was issued February 7, 1991.

Planning and Classification

This area is within the Tanana Basin Area Plan, subregion 1, Fairbanks North Star Borough, unit E, Chatanika River Corridor, subunit 2. It is classified for settlement. The primary surface use is settlement; secondary surface use is forestry, public recreation, and wildlife habitat. Subsurface use was closed prior to land sale, MCO 383. The state tracts around the subdivision, tract A, B, and C were later opened to mineral entry, MOO 905. Nothing in the area plan prohibits issuance of this easement.

Agency Review

On January 25, 2007 an agency notice was sent via email to the following agencies:

Jack Kerin, Placer Mining Manager, Mining Section, Division of Mining, Land & Water (DMLW), Department of Natural Resources (DNR)

Mark Eliot, Regional Forester, Division of Forestry, DNR

Marc Lee, Area Forester, Division of Forestry, DNR

Robert Mclean, Fairbanks Area Manager, Office of Habitat Management and Permitting (OHMP)

Chuck Ault, Resource Manager, Mental Health Trust Land Office (MHTLO)

John F. Bennett, Northern Region, Chief Rights-of-way, Department of Transportation and Public Facilities (DOT & PF)

Judith Bittner, Chief State Historic Preservation Officer, Office of History and Archaeology

Paul Costello, Director Land Management, Fairbanks North Star Borough (FNSB)

Christy Everett, Regulatory, Fairbanks Field Office, US Army Corp of Engineers (USACE)

Notice was sent to AJ Wait, Land Disposals Section, DMLW, DNR via email on February 26, 2008. The Disposals Section should have been sent the original notice on January 25, 2008.

No responses were received from Mining, Forestry, the MHTLO, or the Office of History and Archaeology.

The MHTLO was contacted via email again at a later date to obtain comments on possible alternatives. They responded on March 6, 2008 stating it was not in the best interest of the subdivision, as a whole, to consider construction of access on any land other than the dedicated easement. On March 14, 2008 Wendy Woolf, Deputy Director of the MHTLO, called

to clarify their position. The MHTLO does not support an easement that would end at Mr. Ames' parcel. They would not object to Mr. Ames' proposed easement if it continued along the southeast boundary of his parcel and connected with the north end of Treasure Street; however, they prefer that Mr. Ames develop the currently platted dedicated road easement or the section line easement. They believe that legal access already exists and that to issue an alternate easement disregards the prior planning that went into the development of the subdivision.

The Land Disposals Section opposed the proposed easement. They pointed out that the parcel already has legal, platted access, and issuing additional easements could lead to a proliferation of roads and trails. They acknowledged that while it may be more costly to construct the road in the platted right of way, issuing an alternate easement simply because of the cost of construction would set a precedent that could encourage others to apply for alternate easements as well. Purchasers of subdivision parcels with unconstructed roads should have taken into consideration the location and cost of building the road.

The USACE responded with a letter stating that it appeared the proposed right of way may include wetlands and is subject to USACE jurisdiction, and that construction work that would include the discharge of dredged and/or fill material into wetlands would require authorization from them. The letter explained that land clearing operations that involve vegetation removal with mechanized equipment and land leveling or other soil disturbances are considered placement of fill and would require authorization. According to USACE should an access road be developed within the proposed right of way, the applicant would need to demonstrate there are not practical alternatives available, to include demonstrating why the use of the Treasure Street right of way would not be practical.

The OHMP and the DOT & PF had no objections to the proposed project.

The FNSB did not oppose or support the request, though they had questions. They wanted to know why Mr. Ames wanted to deviate from the platted easement, to what standards the road would be built and who would maintain it. A return email was sent explaining that that cost was the primary reason Mr. Ames had proposed an alternative easement, that we would suggest borough road standards be use, and that Mr. Ames and the other subdivision landowners would be responsible for the maintenance of the road. Mr. Ames later conveyed to the DMLW that cost was not the only reason to seek an alternative route, but also to encourage development of the subdivision, which he believes his proposed route would do.

While all comments are taken into consideration, comments received from agencies which are directly impacted by the proposed project are most relevant to this decision. The MHTLO has a vested interest in any decision made regarding Olmes West Subdivision in that they own a majority of the lots within the subdivision and are required to manage their lands to generate income, which is used by the Alaska Mental Health Trust Authority for the benefit of Trust beneficiaries.

The comments from the Land Disposals Section must also be taken into consideration. The Disposals Section is the entity that implements the State's programs for providing lands for settlement by Alaskans. They must ensure that the development of settlement lands is managed for maximum use consistent with the public interest. Both the MHTLO and the Lands Disposals Section believe that authorizing an alternate easement would ultimately be

detrimental to the value of the subdivision, disregard all prior planning, and set a poor precedent for future subdivision development.

Public Notice

Public notice was posted at the Fairbanks DNR building and on the DNR Public Notice website on January 25, 2007, with a deadline of February 25, 2008.

The following people responded with comments in support of Mr. Ames' proposal: Martin D. Baker; JoanMarie Bushey; Banford C. Charles; Stephen C. Glass; Maynard H. Lobell, owner of MS1938 east of Olnes West Subdivision; William S. Lucas; Timothy J. Mabery; Dennis M. Peffley; Troy L. Poage; Dalton Boster; and Ora and Burlin Whittle. The letters were similar in nature, expressing support for the "Ames route" because it would solve the problem of access and open the subdivision up for its original purpose which was settlement. They believe that issuing an easement for the alternative route would have no adverse impacts.

Public notice was also sent to the other landowners within the Olnes West Subdivision: Jerry L. Crow, Banarsi Lal, Lewis J. Cogdill, Donald A. Leslie, Lawrence A. Murakami, and Dennis M. Gentleman. The letter to Donald Leslie was returned with no forwarding address, and no response was received from Lewis Cogdill or Banarsi Lal. Dennis and Marilyn Gentleman (lot 5, block 1), and Jerry Crow (lot 8, block 1) responded in favor of the proposed easement. While Lawrence Murakami (lot 5, block 2) understood why Mr. Ames' was seeking an alternate route, he was concerned that the issuance of an alternate easement would ultimately discourage development of a road to his property in block 2. Public comments are addressed further in the discussion portion of this document.

Background

Mr. Ames was the successful applicant during a state subdivision lottery in 1982 for block 1, lot 12, ADL 408236, within the Olnes West Subdivision. This parcel was conveyed to him June 13, 1989.

At the time of offering, access to the parcels was addressed in the 1982 subdivision sale brochure stating that, "The State has no obligation to construct roads to any parcel. Legal access exists to all subdivisions" and "roads and rights-of-way shown on maps designate the areas reserved for road construction and access and are not meant to indicate the existence of a constructed road." Legal access to Olnes West on the north end is via ADL 403433 from the Elliot Highway to the north end of Treasure Street, the dedicated and platted road right of way designated to access individual parcels within the subdivision. Legal access to the south end is through Vault Subdivision, along ADL 403433, then along Treasure Street.

Mr. Ames submitted a land use permit application, LAS 22842, in 1999 to develop the reserved easement, ADL 403433, on the north side of the subdivision. According to Mr. Ames, when he submitted the application he had hoped that Newmont Gold Company, which was considering developing mining claims to the west of Olnes West, would assist with the construction of the road since they had not identified an access route to the claims in the permit application to the USACE. When it appeared to Mr. Ames that Newmont Gold would not be assisting with the development of the route, he asked that the LUP application be closed and he submitted the current application for an easement along an alternate route. When asked why he did not want to construct a road along the designated right of way (ADL 403433), he stated that it would not

be practical and would cost more due to the amount of fill that would be needed in this low lying area which includes Dome Creek.

An easement application was received on October 28, 1999. The application was never adjudicated. In January of 2007, Mr. Ames inquired about the status of his application and asked that the adjudication process continue. When asked why he had not come in sooner to inquire about the application's status, Mr. Ames explained that he had not had funding for road construction. In May he came in to update and verify the information in the application. In September Mr. Ames called to find out the status of his application. The file was assigned to an adjudicator at that time.

Olmes West Subdivision was first offered in the spring of 1982. Twenty lots were offered. Of those original 20 lots, only 7 are currently owned by private individuals. The Mental Health Trust Land Office (MHTLO) now owns all other lots except one lot, which went back to the State and is a potential reoffer (lot 2, block 2).

According to the subdivision sale brochure, the terrain in the subdivision is hilly with slopes facing the southwest. Vegetation consists primarily of medium-sized birch and aspen tree. The elevation ranges from 600' to 1,000'.

According to survey note 11, parcels within the subdivision may contain wetlands as defined within the purview of Section 404 of the Clean Water Act and may require US Army Corps of Engineers permits prior to the placement of fill material into these areas. Landowners are directed to contact the USACE prior to commencing construction.

The USACE supported this in their agency response, stating that this area and the proposed route include waters of the United States, wetlands, subject to Corps jurisdiction. For regulatory purposes the Corps of Engineers defines wetlands as those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

A field inspection was conducted January 8, 2008 to determine if there was a significant reason the platted easement could not be used for access, and then to look at and compare the platted easement with Mr. Ames' proposed route and the section line easement. The field inspection identified no reason the platted easement could not be used, though due to time and light constraints we were unable to inspect the north end of Treasure Street and the northern access along ADL 403433. That area is at a lower elevation than Mr. Ames' parcel and his proposed route. The subdivision survey notes and the USACE have identified that there may be wetlands in this area, but no delineation has been completed. This is noted because the presence of wetlands would contribute to increased cost of road construction and disturbance would have a greater impact to the land. The presence of significant wetlands would be the only reason to consider not constructing the northern access, and we were unable to determine this during our field inspection. However, the USACE has noted that Mr. Ames proposed route includes wetlands as well.

An inspection of Mr. Ames' proposed route established that road construction is physically feasible, though the section line north of his route follows a slope that is much steeper than the platted easement and Mr. Ames' proposed easement.

One Olnes West subdivision landowner mentioned in a follow up telephone call that the northern reserved access, ADL 403433, could not be developed because it would impact the Davidson Ditch. The Davidson Ditch, however, is not located within the Olnes West Subdivision or within any of the platted or reserved easements. The reserved easement, ADL 403433, on the north side of the subdivision is partially located on or near an old railroad grade that is elevated, which he may have believed was the Davidson Ditch. There is documentation within the case file regarding the railroad grade and the Alaska Railroad's assertion that this was a railroad right of way. They were unable to substantiate that claim and the State asserted the Alaska Railroad has no valid existing right of way.

Currently constructed access exists through Vault Subdivision up to the corner section common to sections 25, 26, 35, and 36, T3N, R1W, FM. Construction for any southern access to Olnes West subdivision would need to start at this point.

Alternatives

Mr. Ames has stated that he wants to obtain an easement which departs from the existing platted, dedicated easement because the cost of constructing the road on the platted easement is prohibitive. The proposed route is a more direct route to Mr. Ames' parcel. Four alternatives were considered during this decision making process; issuing an easement for Mr. Ames' proposed route, issuing an easement for Mr. Ames' proposed route with an extension, requiring construction on the platted easement, and requiring construction on the section line easement.

Mr. Ames' Proposed Route

The easement that Mr. Ames proposed would provide access to 6 other lots within block 1. The proposed easement would not provide access for the remaining 5 lots in block 1 or any of the lots within block 2. This route would benefit a smaller number of individuals, than the platted easement. If the easement that Mr. Ames has proposed was issued and the platted easement was later built there would be two parallel easements within 700' of each other. This alternative would have a greater impact on the area since two roads would be built versus one, which would not be consistent with the State's goal of limiting multiple routes.

The route that Mr. Ames has proposed would be on tract C, which the state owns and is open to mineral entry. Note 12 of the survey notes states that public access across state owned tracts may be obtained by application to the Department of Natural Resources. There is nothing to prevent the State from issuing an easement for this location, should it be determined that this easement would be in the State's best interest and the best alternative.

Construction of this route would more than likely encourage development of the parcels that the route would access, increasing the value of those specific parcels, though it would not increase the value or encourage development of the parcels not directly affected by Mr. Ames' proposed route.

A field inspection determined that this route is a suitable location for road construction. The land is upland and slopes gradually towards Mr. Ames' parcel, though the USACE has identified wetlands and the need for USACE permitting.

Mr. Ames' Proposed Route with Extension

In order for Mr. Ames' proposed route to provide access to a greater number of individuals, it may be in the State's best interest to require Mr. Ames to give the State an easement across his property and then have him continue the road through the remaining lots (lots 8 – 11, block 1). This would provide access to 5 additional parcels, all lots within block 1, and possible access to the lots on the north end of block 2. Once Treasure Street was built it would create a loop within the subdivision. In order to pursue this alternative, however, the MHLTO would need to provide an easement between lots 8 and 11, and 9 and 10, of block 1.

The MHTLO responded that they would not issue an easement between these lots because they believe any development of an easement other than the platted easement would decrease the value of the Trusts over all holdings within the subdivision. They, however, would not object to the continuation of Mr. Ames' proposed route on tract C between the tract and his southeast boundary to Treasure Street. This also would create a loop within the subdivision, versus a dead end road to Mr. Ames' parcel.

This alternative would still have a larger impact due to more lands being disturbed for construction of two roads which would form a loop. A greater number of individuals could be served by this route since it would not dead end at Mr. Ames' parcel, though not as many as constructing the platted easement would serve. Treasure Street would still need to be constructed at a later date.

Construction on Platted Road Dedication and Existing Reserved Easement

This alternative would have the least impact on the environment since it would limit the disturbance by allowing for only one road to be constructed within the subdivision, which would provide access for all subdivision landowners. This alternative would also prevent duplicitous routes within the subdivision consistent with the State's goal of limiting multiple routes which would create a web-like pattern. If constructed, this route would ultimately benefit the greatest number of people since it would provide access to all parcels. Construction of this route would more than likely encourage development of the rest of the subdivision, and it is believed that access would only increase the value of the parcels.

As was previously mentioned, the field inspection determined that the platted easement is an appropriate location for road construction. Nothing was found to demonstrate why this route could not be developed. It should also be noted that an extensive feasibility review and planning went into the subdivision design.

If the applicant developed the reserved easement, ADL 403433, on the north side of the subdivision the applicant would not need to pay for the entire construction of Treasure Street, but only about 300' feet of it. The reserved access, ADL 403433, from the Elliot Highway to the northern point of Treasure Street is approximately 3690' along the topographic contour. This route is said to be on portions of the old abandoned railroad grade. Total length of construction would be about 4000', which would be less than the construction of Mr. Ames' proposed route. Although the Division is not in a position to determine the difference in cost of the construction due to terrain and soils differences between the two routes, Mr. Ames has not been able to demonstrate why the reserved easement on the north side of the subdivision and the platted road right of way is not an option for construction. While the Division does recognize that this route is in an area lower in elevation and includes Dome Creek, which would more than likely

require construction methods beyond what Mr. Ames intends to use on his proposed route, the development of the existing platted road dedication and easements are consistent with subdivision design and access intent as advertised in the original sale brochure.

Construction on the Section Line

The final alternative would be to construct access along the section line to the point where it intersects with Treasure Street on the north end of the subdivision. According to survey note 5, unless vacated, all section lines are subject to a fifty foot easement each side of the section line, which is reserved to the State of Alaska for public highways under AS 19.10.010. There is no easement vacation.

This would still have a greater impact than constructing the platted easement because ultimately two roads would need to be constructed for access to all parcels. Only Mr. Ames' parcel and lot 1 and 2 of block 1 would be served by this route, so of the alternatives it would have the least benefit to the most individuals. It would more than likely have little beneficial impact on development or value of the other subdivision parcels.

A field inspection also determined that the section line easement north of the platted easement declines steeply and may not be the best location for a road. There could possibly be erosion issues if a road were constructed along the section line.

Comparison of Alternatives

Of the alternatives, utilizing the platted easement would provide the greatest benefit to the most people, with minimal impact due to only one road being constructed. Development of the platted easement would more than likely lead to development consistent with original planning and ultimately add value to the subdivision parcels.

Mr. Ames has made it clear throughout this process that he is not interested in other alternatives and he opposes the consideration of those alternatives by DNR and other agencies.

Discussion

The legal platted access through Olnes West Subdivision is along Treasure Street and access to the subdivision is reserved by ADL 403433. The brochure for the subdivision sale was clear in stating that the state had no obligation to construct roads to any parcel and that the roads and rights of way shown on the maps designated the area reserved for road construction. When Mr. Ames purchased his parcel he understood that there was no constructed access, that he and other landowners would be responsible for constructing the road, and that it would need to be constructed along Treasure Street.

Mr. Ames' argument is that he is entitled to access his land and that the cost of constructing the platted easement is prohibitive, thereby in effect we are denying him access if the DMLW does not allow the proposed easement. He believes that by issuing him an alternative easement which would cost less, which would provide him access to his parcel, we would support the State's original goal of providing land for Alaskans. Except for the parcels along his proposed route, he does not consider how issuance of this would affect future access for others within the subdivision. By building access which would serve some parcels in block 1, he is effectively limiting the number of people available to share the cost of constructing the access for those in

block 2, and the northern parcels of block 1. By providing Mr. Ames access we do not encourage the development of other parcels, or the remaining parcels, just those close to Mr. Ames' route.

Mr. Ames explained that because many of the parcels are not in private ownership there are a limited number of landowners to share the cost of construction with. In 1996 almost two-thirds of the subdivision was transferred to the MHTLO. When asked if there were future plans for the sale of parcels within Olmes West, it was explained that parcels had been offered in the past, but they had not received any interest. The Trust will offer more parcels within the subdivision when they receive increased interest. While the DMLW understands that purchasers of subdivision parcels within Olmes West could have reasonably assumed that additional parcels would be sold, there was never a guarantee that all parcels would be sold in order to share the cost of construction.

To allow an alternate route simply because the cost of construction of the platted easement is prohibitive for Mr. Ames would set a precedent that does not lend itself to comprehensive land management and would discount all prior planning. It would also require the DMLW to determine when the cost of a road is prohibitive to an individual, requiring the state to determine the cost of the road construction and the amount of money an individual land owner has available for construction. Ultimately we would be required to determine at what point the construction of a road is considered cost prohibitive to an unknown individual and implement that policy throughout the subdivision program. This is not practical and not in the best interest of the State or future subdivision development, where legal access is required to be designed and reserved before offering to give potential buyers an idea of where development will occur.

The public comments, with the exception of a parcel owner in block 2, supported issuing an easement for Mr. Ames' proposed route. Although the comments demonstrated support for Mr. Ames, they were for the most part submitted by individuals not directly affected by this decision, and did not provide additional information not known prior to this decision. Many of those that commented supported the proposed route since it would "solve the problem" of access, years of neglect and disuse by the State, and open the subdivision for settlement. Other than the unwillingness or inability of the 7 subdivision owners to share the cost of construction, there is no access problem. Platted access exists and is appropriate for road construction. The DMLW certainly understands the frustration of subdivision landowners with the fact that a majority of the parcels have not been sold to private individuals, but it is the MHTLO's contention that there has been no interest in those parcels. When an interest is shown in them, they will sell them. While the majority of the public comments supported the proposed route, they did not consider the impact on the value of other parcels not accessed by Mr. Ames' proposed route or the impact on the future development of other parcels.

In the 26 years since the original lottery, with the exception of lot 2, block 2, it does not appear that any of the current landowners have attempted to develop these lots, which would not reflect neglect and disuse on the part of the State. If the MHTLO did not own the parcels, there is no evidence that they would already have been sold and in the hands of private landowners. The State made no guarantee that all parcels would be sold in order for the cost of construction to be shared by a larger number of individuals. Parcels are sold as is, and the brochure made clear that the development of the platted access was the responsibility of the landowners. While there can be considerable debate about the effectiveness of a land program that does not provide developed access, there can be no debate about the conditions under which the individuals purchased their parcels.

Mr. Ames contends that his proposed route is the most efficient route to his parcel, but he has not sufficiently demonstrated why he can not develop the access on the north side of the subdivision within the platted easement. This route would actually be shorter than his proposed route, though the terrain may offer more challenges for road development. Mr. Ames could construct a portion of the platted easement without having to develop all of Treasure Street. If the landowners south of Mr. Ames' parcel along Treasure Street wanted access to their parcels, they could share the cost of extending the construction of the platted easement. This would limit the negative impact of multiple routes and encourage continued development along the platted easement and the parcels along that route.

Mr. Ames insists that his proposed route is the best route; however, he has not demonstrated to the State why the platted easement is not appropriate and, other than the cost to him individually, why his proposed route would be the most beneficial route for all subdivision landowners.

Environmental Risk

There are minimal environmental risks from the proposed activity because no hazardous materials would be used or stored on site. Fuel, lubricants, and hydraulic fluids would be contained within the vehicles being operated for the project. A minor risk of release of these fluids into water exists from hydraulic line breakage, leakage from the system, or equipment mishap. General stipulation #13 of the EEA would require refueling to be conducted at least 100' from any body of water.

Survey

If the application for an alternative easement was approved, an EEA would be issued to begin construction and survey. A Division of Mining, Land and Water (DMLW) approved as-built survey would be required prior to the issuance of the final easement document. This is a cost that would be borne by Mr. Ames.

There is no survey requirement for developing an existing platted, dedicated easement.

Performance Guaranty and Insurance

The applicant would be required to provide a surety bond or other form of security acceptable to the DMLW payable to the State of Alaska. The performance guaranty would remain in effect for the term of the EEA to secure performance of the permittee's obligations defined in the permit stipulations.

A performance guaranty is not required for developing an existing platted, dedicated easement.

Per 11 AAC 96.065 (Insurance) the Department can waive the requirements for insurance. After considering the risks associated with the activity and the potential risks to the state, it would be recommended that the requirement for insurance be waived. General stipulation #18, Indemnification, would ensure the Mr. Ames understands that he assumes all responsibility, risk and liability for his activities related indirectly or directly to the permit if issued.

Use Fees

Per 11 AAC 05.010(e)(12) a public right of way or easement under AS 38.05.850 for a road, trail, or airstrip, has a one-time fee of \$50 per acre unless otherwise provided in a reciprocal

right of way agreement. Mr. Ames' fee would be \$100, since the proposed road is less than one acre.

There is no use fee for developing an existing platted, dedicated easement.

Term of Easement

The term of the public easement would be for 50 years and could be extended by the Director of DMLW. The easement would be subject to the vacation process, if deemed necessary by the state.

Easement Revocability

Per AS 38.05.850(c), DMLW has determined this authorization to be functionally revocable. The road could be removed and State land could be rehabilitated. Due to the revocable nature of this authorization, public notice was not required; however, public notice was conducted as described above.

Economic Benefits

Article VIII, § 1 of the Alaska Constitution states, "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest." Granting a public easement to Mr. Ames for his proposed route would not be consistent with public interest for this subdivision. It would not provide a benefit to all current or future landowners within the subdivision, and may in fact hinder future develop of access for others. It would have a greater impact on the resources and would create multiple routes within the one small subdivision.

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. While the proposed route may benefit Mr. Ames and those who have parcels along his proposed route, it will not benefit others, and may actually be a detriment to the development of access to the rest of the subdivision.

Decision

In adjudicating an easement, DMLW seeks to facilitate development, conservation, and enhancement of state resources for present and future Alaskans, while minimizing disturbance to vegetation, hydrology and topography of the area that may impair water quality and soil stability. The DMLW further seeks to minimize duplication of access routes in areas where sufficient access already exists, thereby avoiding the development of a web-like pattern of access routes across the landscape.

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 to not issue an easement to Mark Ames for his proposed route. Mr. Ames' proposed route would create an additional road within close proximity to the platted road, creating a duplication of access routes, and possibly limiting future development of the platted access.



Northern Region Manager

3-24-08

Date

Appeal

A person affected by this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received within 20 days of the issuance of this decision as defined in 11 AAC 02.040(c) and may be mailed or delivered to the Commissioner Tom Irwin, Department of Natural Resources, 550 W. 7th, 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 of the department on the 31st day after issuance. 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 – Diagram of the Location of the Proposed Easement

Attachment B – Diagram of Olnes West Subdivision and Surrounding Area