

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to Dispose of Trust Land Adjacent to Yosemite Drive
ADL #222746

Notice is hereby given that, pursuant to the provisions of AS 38.05.801 and 11 AAC 99, the Executive Director of the Alaska Mental Health Trust Land Office (TLO) has determined that it is in the best interest of the Alaska Mental Health Trust and its beneficiaries to complete an **Easement (455)** expansion of certain Trust land to the Municipality of Anchorage and Anchorage Water and Wastewater Utility. The basis for this determination is explained in a written best interest decision prepared by the Executive Director pursuant to 11 AAC 99.040.

The Trust land affected by the decision is adjacent or near to Yosemite Drive which intersects Eagle River Loop Road and Yellowstone Drive in Eagle River, Alaska, and is more particularly described as: a portion of the North $\frac{1}{2}$ of the Northeast $\frac{1}{4}$, located within Section 23, Township 14N, Range 2W, Seward Meridian, containing up to .81 acres of expanded Right of Way (ROW) for a new ROW area of up to 2.72 total acres (MH Parcel **SM-1623**).

Persons who believe that the written decision should be altered because it is not in the best interests of the Trust or its beneficiaries, or because the decision is inconsistent with Trust management principles set out in 11 AAC 99.020, or any other provision of 11 AAC 99, must provide written comments on or before **4:30 PM, February 15, 2017**. Comments should be submitted to the TLO at **2600 Cordova Street, Suite 100, Anchorage, AK 99503**, or by fax **(907) 269-8905** or email mhtlo@alaska.gov. Following the comment deadline, the Executive Director will consider timely comments that question the decision on the basis of the best interest of the Alaska Mental Health Trust and its beneficiaries or inconsistency with 11 AAC 99, and the best interest decision may be changed in response to such written comments or other information. Commenting parties will be provided a copy of the final best interest decision after the end of the notice period.

To be eligible to file for reconsideration of the best interest decision, or to file a subsequent appeal to the Superior Court, a person must have submitted written comments during the notice period. Eligible persons will have twenty (20) calendar days after published notice of or receipt of the final written decision to request that the Executive Director reconsider the decision under 11 AAC 99.060(b).

Copies of the written decision are available at the Trust Land Office, or at www.mhtrustland.org. If you have any questions concerning this action, please contact the Trust Land Office at (907) 269-8658.

In compliance with the Americans with Disabilities Act, the Alaska Mental Health Trust is prepared to accommodate individuals with disabilities. Please contact the Trust Land Office at (907) 269-8658 for assistance. Requests for assistance must be received at least 96 hours prior to the comment deadline in order to ensure that any necessary accommodations can be provided.

The Executive Director of the TLO reserves the right to waive technical defects in this notice or to amend, postpone, or vacate the best interest decision.



John Morrison
Executive Director



Date

Published Alaska Dispatch News: 01/13/2017

**The Alaska Mental Health Trust Authority
Trust Land Office**

**BEST INTEREST DECISION
YOSEMITE DRIVE ROW TRANSFER OF INTEREST AND EXPANSION**

ADL #222746
MH Parcel(s) SM-1623

In accordance with AS 38.05.801 et seq. and the implementing regulations governing Alaska Mental Health Trust (“Trust”) land management (11 AAC 99), Trust land shall be managed consistently with the responsibilities accepted by the State under the Alaska Mental Health Enabling Act (P.L. 84-830, 70 Stat. 709 (1956)). This means that management shall be conducted solely in the best interest of the Trust and its beneficiaries.

In determining the best interest of the Trust and its beneficiaries, and in determining consistency between state law and the Alaska Mental Health Enabling Act, the Executive Director of the Alaska Mental Health Trust Land Office (“TLO”) shall, at a minimum, consider the following interactive Trust management principles in accordance with 11 AAC 99.020:

- Maximization of long-term revenue from Trust land;
- Protection of the corpus;
- Protection and enhancement of the long-term productivity of Trust land;
- Encouragement of a diversity of revenue-producing uses of Trust land; and
- Management of Trust land prudently, efficiently, and with accountability to the Trust and its beneficiaries.

I. Proposed Use of Trust Land. An amendment to ADL #222746 to expand the area of the “perpetual right-of-way permit” and to transfer the Trust’s residual interest in the permitted right-of-way. This may include replacement of the existing permit with a new right-of-way or public use easement, which may also include formal dedication. This easement expansion is necessary to accommodate utility installations and sight distance requirements (sight visibility easement) for the current design of the Yosemite Drive Upgrade Project. The expansion may also include additional right-of-way or public use easement as necessary to accommodate an additional northbound (bypass) lane, the inclusion of which is at the request of the Trust, and is still be evaluated as a part of the design scope. The Yosemite Drive Upgrade project is expected to be completed by the Municipality of Anchorage (MOA) during this calendar year (2017).

II. Applicant/File #. ADL #222746.

III. Subject Property.

A. Legal Description. A portion of the North ½ of the Northeast ¼ of Section 23, Township 14 North, Range 2 West, Seward Meridian, containing 55 acres more

or less. This 55-acre tract is bifurcated by Yosemite Drive, which is the current right-of-way (ROW) permitted under ADL #222746. The ROW includes 1.91 acres of permitted existing easement with a proposed expansion of approximately .31 acres for a new area of approximately 2.22 total acres. There exists the potential of a further expansion up to 0.50 acres total along either side of the road to accommodate an additional northbound (2nd) bypass lane, the inclusion of which is at the request of the Trust, and is still be evaluated as a part of the design scope. This could make the total ROW or PUE granted up to 2.72 acres in the final configuration.

B. Settlement Parcel Number(s). SM-1623.

C. Site Characteristics/Primary Resource Values. This site includes two main areas commonly referred to within the Trust Land Office as Yosemite West and Yosemite East. These distinct areas are created through the presence of Yosemite Drive, which bifurcates the west from the east. The area of the ROW is captured within the following land descriptions. Yosemite West is approximately 8 acres in size and generally flat with good drainage and overall development potential.

Yosemite East includes approximately 46.6 acres. Yosemite East is further divided into two subareas, the first of which fronts Yosemite Drive, and is comprised of gently sloping forested land totaling approximately 27 acres in size. This area is bound by Eagle River High School to the north, Yosemite Drive to the west, and includes a small section to the southwest that is fronted by Eagle River Loop Road. The topography, native soils and natural drainage make development feasible. The second subarea within Yosemite East is to the southeast, and exists within the extents of a former landfill that was long ago encapsulated with clay and subsequently deemed properly closed by the Department of Environmental Conservation. This subarea includes approximately 19.5 acres with frontage to the south along Eagle River Loop Road.

For the overall area, the primary resource value to the Trust is as real estate with potential revenue generation through eventual commercial and/or residential development initiatives. The subarea of the former landfill has value as an open area, greenbelt, park space or playfields.

D. Historical and Existing Uses of the Property. At present, both Yosemite West and East remain as vacant land. Yosemite West is presently inaccessible through the presence of an earthen berm paralleling Yosemite Drive to prevent trespass and/or illegal dumping. The Yosemite East area is more accessible with an established gated driveway intersecting Yosemite Drive. This parcel has generated small amounts of revenue for the TLO (less than \$1,000/annually) through license agreements with various authorized users. Yosemite East also includes a Conditional Use Permit (CUP) for a natural resource extraction allowing for the placement of fill of up to 132,000 cubic yards and associative site restoration. This CUP was recently extended, is valid through December 1, 2021, and has already accommodated for the placement of approximately 75,000 cubic yards of fill extracted from other Trust land in the UMED District (Tract C-2).

- E. Adjacent Land Use Trends.** Lands in the area are a mix of vacant developable lands, and lands recently developed to include the site of Eagle River High School, and further to the north Eagle Pointe Subdivision, which began in the mid 90's and now includes approximately 200 homes with full build out to include up to 300 homes.
- F. Previous State Plans/Classifications.** None known.
- G. Existing Plans Affecting the Subject Parcel.** Per the MOA Planning and Zoning designations, Yosemite West (8 acres) is zoned as PC-SL, which is the designation for Planned Community with Special Limitations. This zoning was established through Ordinance AO No. 84-143. However, the most current version of the Chugiak-Eagle River Comprehensive Plan adopted by the MOA on December 12th, of 2006 identifies this area a commercial, and it is the desire of the Trust to eventually rezone to a commercial zoning consistent with the highest and best use for this area.

The buildable area of Yosemite East (27 acres) is zoned as R-1-SL allowing for residential development of single family homes with minimum 6,000 S.F. lots totaling between one and three dwelling units per acre and up to 97 lots.

The area of Yosemite East including 19.6 acres created by the extents of the former landfill is zoned as PLI-SL. This is the land use designation for Public Lands and Institutions with Special Limitations. The combination of this area serving as a former landfill, and fronting Eagle River Loop Road, which is an AKDOT Controlled Access, makes it an improbable site for economically feasible development in the current market.

- H. Apparent Highest and Best Use.** Real estate.
- I. Proposal Background.** Proposed is an expansion of the easement to accommodate the installation of a water line (with Anchorage Water and Wastewater Utility as eventual Grantee) that will provide service to both Yosemite West and East. The project also requires a sight distance easement at the intersection of Yosemite Drive and Eagle River Loop Road (with the MOA as eventual Grantee). The proposed easement expansions are captured as Exhibit A and B, and are formally named by the applicant as PUE P-1A (0.25 acres) and P-1E (0.06 acres). As previously stated, there exists the potential of a further expansion up to 0.50 acres total along either side of the road to accommodate an additional northbound (2nd) bypass lane. The addition of this scope remains under evaluation, and would make the total ROW or PUE up to 2.72 acres in the final configuration. Lastly, ADL #222746 was issued as a "perpetual right-of-way permit" (1.91 acres). The permit, required for the original construction of Yosemite Drive, was issued on February 3rd, 1993 in exchange for a one-time payment of \$10,123, which was the established "fair market value" per acre at the time of issuance. The Grantee is the Dena'Ina Partnership. In 1998, the Dena'Ina Partnership, as Developer, entered into a subdivision agreement with the MOA for the completion of Eagle Pointe Subdivision (formerly Parkside Estates) located north of Eagle River High School. The agreement required that the Developer transfer the ROW permit to the MOA upon completion of

Yosemite Drive. This transfer was not completed, and concurrent with the MOA's request for the expansion of the permitted area, they have also requested a formal transfer of interest, which is anticipated to include replacing the existing permit with a new right-of-way or public use easement, and which may also include formal dedication. It is the intent of the Trust transfer remaining residual interest in the permitted area, and to dispose of the overall area necessary to support construction of the final design of the project.

- IV. Terms and Conditions.** Terms and conditions are as established in the original ADL #222746, and any subsequent amendments. The Trust is a successor to the original permit Grantor, which was the Division of Mining Land and Water of the Department of Natural Resources. The term is perpetual in nature contingent on no change in use for the granted purpose. This permit includes a special stipulation that the Grantor, "reserves the right to add, delete or modify stipulations during the term of this Right-of-Way permit." It is anticipated that the permit may be terminated and replaced by updated easement agreements to be issued by both AWWU and the MOA.
- V. Resource Management Considerations.** The proposal is consistent with the RMS, which seeks to receive revenue from the eventual leasing of Trust real estate, or the development and leasing of Trust real estate. Whether the Trust eventually opts to sell, lease or further develop these parcels, all options would recognize increased revenue if the lands are improved to include basic utilities and improved access.
- VI. Alternatives.** The primary alternative to proceeding as proposed would be to deny the applicant. This would prevent the MOA from completing the project without condemnation. Instead by proceeding as explained, the Trust is essentially the applicant as the water main line extension is being completed on our behalf as a component of the Yosemite Drive Upgrade Project being completed for the Anchorage School District by the Municipality of Anchorage Project Management and Engineering Department.

In addition to the above the MOA is completing this project as the result of an unfulfilled platting requirement, and ultimately a Supreme Court judgement requiring the project's completion. The MOA has indicated that it intends to acquire the required areas through condemnation if the Trust does not make voluntary conveyance. Proceeding as proposed is the recommendation of the Trust Land Office.

VII. Risk Management Considerations.

- A. Performance Risks.** The Yosemite Drive Upgrade Project is being completed as the result of a Supreme Court judgement requiring the project's completion. The work will be managed by the MOA and their agents. A formal development agreement will be authored between the MOA and AWWU for the water line main line extension. The permit requires that the permittee and its agents, contractors and subcontractors, "defend, indemnify and hold harmless the State of Alaska". The permit further specifies that the "State of Alaska" is inclusive of, "...the mental health trust provided for in the Alaska Mental Health Enabling

Act,..”. In consideration of the above this best interest decision includes a very minimal performance risk exposure.

- B. Environmental Risks.** Per the terms of the existing (ADL) permit, the permittee assumes all liability for the use of the land.
- C. Public Concerns.** None known.

VIII. Due Diligence.

- A. Site Inspection.** The TLO has inspected the site for the proposed use, and to reiterate, the application is for an expansion to the existing easement. The MOA’s Project Management and Engineering Department has a long history of self-managing construction projects consistent with the scope of the Yosemite Drive Upgrade Project.
- B. Valuation.** Through appraisal work completed by Black-Smith, Bethard and Carlson (BBC) on the MOA’s behalf, for PUE P1-A, the appraisal included an indication of value of \$24,400 for a 50% fractional interest in the total easement area (0.25 acres). This is sometimes referred to as an encumbrance of rights factor (ERF) or an easement-to-fee ratio (EFR). Because the MOA only needs this easement to accommodate sight distance, they perceive remaining residual value in the land area to the Trust for a variety of other potential uses that could be concurrent with the sight distance easement. Through negotiation with the MOA, this offer has been increased to \$46,966, with the level of fractional interest conveyed remaining to be determined, but anticipated at or above 80%. Maintaining a residual interest in this easement area is appealing to the Trust for purposes of maintenance and drainage as well as the potential for meeting landscape buffer requirements on future development efforts.

Additionally, the MOA has offered \$37,440 for an “administrative settlement” pursuant to voluntary conveyance of the Trusts’ residual interest in the perpetual right-of-way permit (ADL #222746). This administrative settlement is for whatever form of agreement the conveyance may take (transfer of existing Dena’Ina Partnership permit, execution of new easement agreement, formal dedication of right of way through a platting action etc.).

Lastly, specific to the easement area (PUE P1-E) required for the water main line frontage extension (0.06 acres) and the potential inclusion of an additional northbound (bypass) lane (up to 0.5 acres), the Trust is not charging for these sections of expanded easement area. Both of these features of construction are value enhancement to Trust land, which is the benefit to the Trust. A fee waiver is permissible by the executive director on the basis of overriding benefit to the Trust.

For the elements of valuation included above, the Trust consulted local appraiser Rick Richter of Richter and Stone, who was in agreement with the value conclusions included in the BBC appraisal.

Terms and Conditions Review. The Trust Land Office will collaborate in the completion of amended terms and conditions to the original permit, or a

replacement of the existing permit with a new right-of-way, public use easement or other form of agreement. The Trust Land Office has retained legal counsel to insure the final terms and conditions are fair and reasonable to the Trust.

IX. Authorities.

- A. Applicable Authority.** AS 37.14.009(a), AS 38.05.801, and 11 AAC 99 (key statutes and regulations applicable to Trust land management and disposal), more specifically 11 AAC 99.130.b.
- B. Inconsistency Determination.** As proposed the issuance of this easement is specifically authorized under 11 AAC 99, any relevant provision of law applicable to other state lands is inapplicable to this action if it is inconsistent with Trust responsibilities accepted by the State under the Alaska Mental Health Enabling Act (P.L. 84-830, 70 Stat. 709 (1956)) as clarified by AS 38.05.801 and Alaska Mental Health Trust land regulations (11 AAC 99). 11 AAC 99 includes determinations that certain State statutes applicable to other State land do not apply to Trust land unless determined by the Executive Director, on a case-by-case basis, to be consistent with 11 AAC 99.020. The State Statutes deemed inconsistent with Trust management principles and inapplicable to Trust land by these regulations have not been applied to this decision or this action, including, but not limited to, AS 38.04 (Policy for Use and Classification of State Land Surface), AS 38.05.035 (Powers and Duties of the Director), AS 38.05.300 (Classification of Land), AS 38.05.945 (Notice), AS 38.05.946 (Hearings), and 11 AAC 02 (Appeals).

- X. Best Interest Decision.** Given the information above and the information contained in the complete record, the Executive Director finds that the proposed transaction is in the best interest of the Trust, subject to the terms and conditions addressed in this decision. The decision is based upon the consideration of the five Trust management principles set out in 11 AAC 99.020 and is in full compliance with 11 AAC 99. This decision does not preclude the TLO from determining that an alternative proposal will serve the best interest of the Trust. A future determination of that nature will require a best interest decision specific to the proposal.

- XI. Opportunity for Comment.** Notice of this Best Interest Decision will take place as provided under 11 AAC 99.050. Persons who believe that the decision should be altered because it is not in the best interest of the Trust or its beneficiaries, or because the decision is inconsistent with Trust management principles set out in 11 AAC 99.020 or any other provision of 11 AAC 99, must provide written comments to the TLO during the notice period. Following the comment deadline, the Executive Director will consider timely written comments that question the decision on the basis of the best interest of the Trust and its beneficiaries or inconsistency with 11 AAC 99. The Executive Director will then, in his or her discretion, modify the decision in whole or in part in response to such comments or other pertinent information, or affirm the best interest decision without changes. The best interest decision as modified or affirmed will become the final agency action, subject to reconsideration procedures under 11 AAC 99.060. Additional notice will be provided for a substantially modified decision. If no comments are received by

the end of the notice period, this best interest decision will be affirmed and the proposed action taken. (See notice for specific dates.)


XII. Reconsideration. To be eligible to file for reconsideration of this Best Interest Decision, or to file a subsequent appeal to the Superior Court, a person must submit written comments during the notice period.

Persons who submit timely written comments will be provided with a copy of the final written decision, and will be eligible to request reconsideration within 20 calendar days after publication of the notice or receipt of the decision, whichever is earlier under 11 AAC 99.060(b). The Executive Director shall order or deny reconsideration within 20 calendar days after receiving the request for reconsideration. If the Executive Director takes no action during the 20-day period following the request for reconsideration, the request is considered denied. Denial of a request for reconsideration is the final administrative decision for purposes of appeal to the superior court under AS 44.62.560.

XIII. Available Documents. Background documents and information cited herein is on file and available for review at the TLO, located at 2600 Cordova Street, Suite 100, Anchorage, Alaska 99503. Phone: (907) 269-8658. Email: mhtlo@alaska.gov.

The disposal action proposed by this decision will occur no less than 30 days after the first publication date of this decision, and after the conclusion of the TLO administrative process. For specific dates or further information about the disposal, interested parties should contact the TLO at the above address, or visit the website at: www.mhtrustland.org.

XIV. APPROVED:



John Morrison
Executive Director
Alaska Mental Health Trust Land Office

1-05-17

Date

In accordance with 11 AAC 99.030(d) and the policies of the Alaska Mental Health Trust Authority, the Trust Land Office has consulted with me, and received concurrence to proceed with the above transaction.

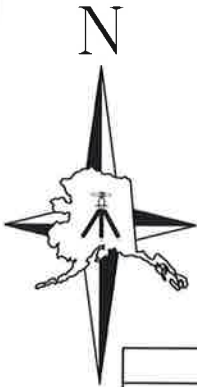


Russ Webb
Chair, Board of Trustees
Alaska Mental Health Trust Authority

1-05-17

Date

EXHIBIT A - PUE P-1A - BEST INTEREST DECISION - YOSEMITE DRIVE ROW TRANSFER OF INTEREST AND EXPANSION

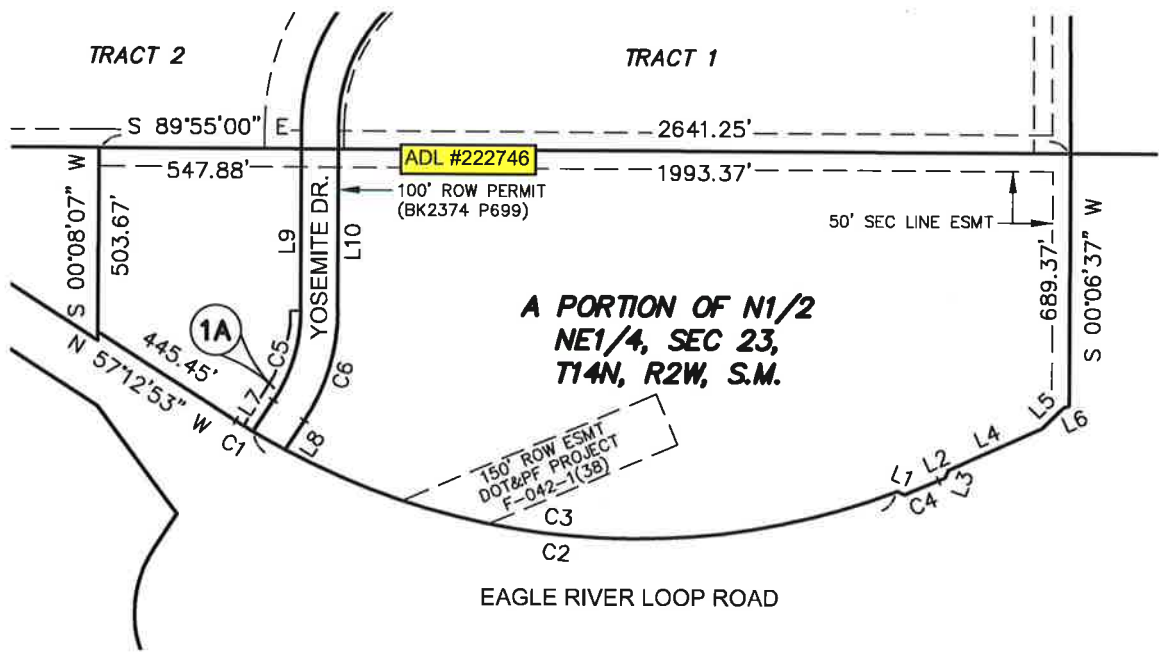


PUBLIC USE EASEMENT

CURVE TABLE					
CURVE	RADIUS	DELTA	LENGTH	CHRD BRG	CHORD
C1	2002.02'	01°35'36"	55.67'	S 58°01'28" E	55.67'
C2	2002.02'	52°10'07"	1822.87'	S 84°54'19" E	1760.55'
C3	2002.02'	49°18'07"	1722.70'	S 86°20'19" E	1670.04'
C4	2016.34'	02°50'26"	99.97'	N 67°08'23" E	99.96'
C5	450.00'	32°56'54"	258.78'	N 16°28'30" E	255.23'
C6	550.00'	32°56'54"	316.28'	N 16°28'30" E	311.94'

LINE TABLE		
LINE	DIRECTION	DISTANCE
L1	S 67°42'27" E	21.78'
L2	N 65°43'10" E	19.99'
L3	N 20°41'54" E	21.20'
L4	N 65°41'54" E	279.62'
L5	N 45°23'13" E	80.61'

LINE TABLE		
LINE	DIRECTION	DISTANCE
L6	N 65°19'44" E	17.17'
L7	N 32°56'58" E	101.07'
L8	N 32°56'58" E	95.47'
L9	N 00°00'03" E	444.00'
L10	N 00°00'03" E	443.86'

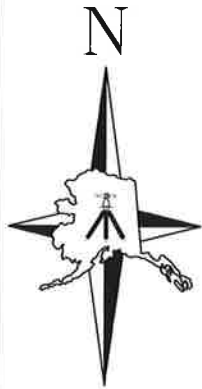


BASIS OF BEARINGS: PLAT# 2015-101

SHEET 1 OF 2

PUBLIC WORKS DEPARTMENT PROJECT MANAGEMENT & ENGINEERING DIVISION		YOSEMITE DRIVE UPGRADE EAGLE RIVER LOOP ROAD TO YELLOWSTONE DRIVE PM&E # 13-36	
	OWNER'S INITIALS: _____	EXISTING PARCEL AREA: ± 54.84 AC.	ROW ACQUISITION TYPE: PUE
	PAGE ___ OF ___ DATED _____	ROW ACQUISITION AREA: ± 10,284 S.F.	SCALE: 1"=500' DATE: 03-03-16
		GRID: SW0251	PARCEL No. 1A

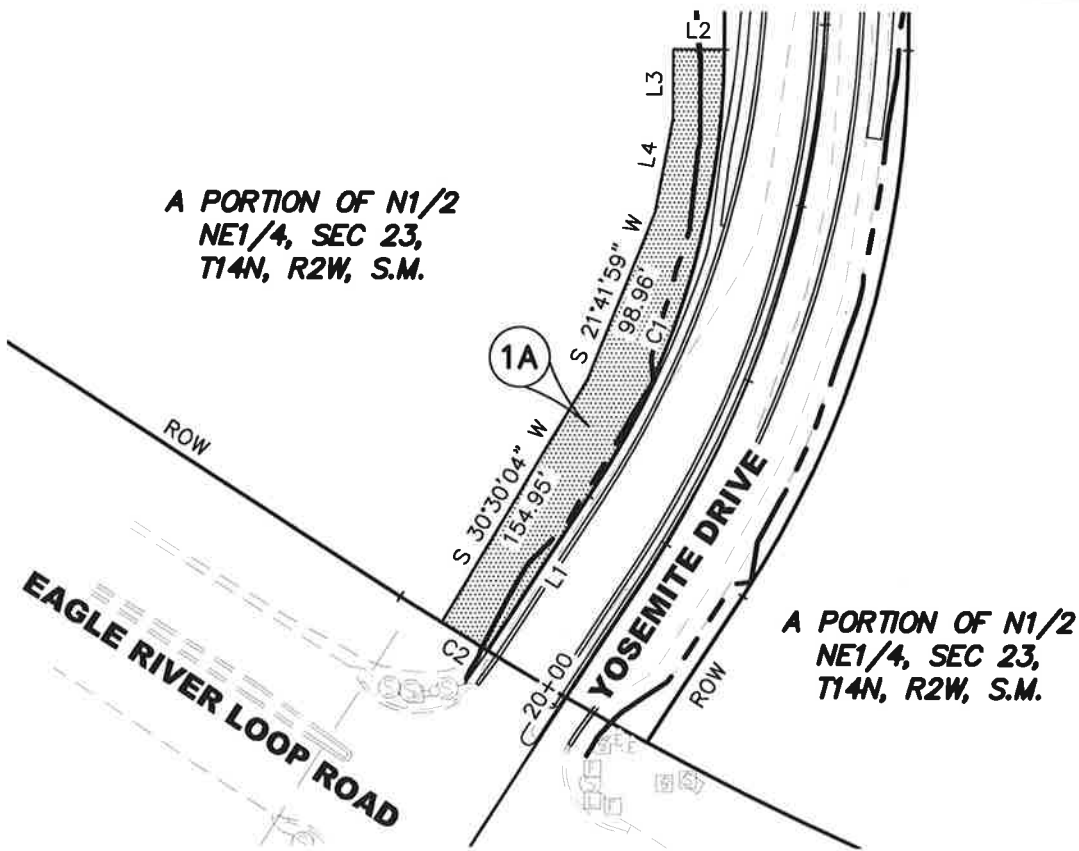
EXHIBIT A - PUE P-1A - BEST INTEREST DECISION - YOSEMITE DRIVE ROW TRANSFER OF INTEREST AND EXPANSION



PUBLIC USE EASEMENT 

CURVE TABLE					
CURVE	RADIUS	DELTA	LENGTH	CHRD BRG	CHORD
C1	450.00'	32°56'54"	258.78'	N 16°28'30" E	255.23'
C2	2002.02'	00°50'12"	29.24'	S 58°24'09" E	29.24'

LINE TABLE		
LINE	DIRECTION	DISTANCE
L1	N 32°56'58" E	101.07'
L2	N 90°00'00" W	27.57'
L3	S 00°00'00" E	37.55'
L4	S 10°27'01" W	52.10'



BASIS OF BEARINGS: PLAT# 2015-101

SHEET 2 OF 2

PUBLIC WORKS DEPARTMENT
PROJECT MANAGEMENT & ENGINEERING DIVISION

YOSEMITE DRIVE UPGRADE
EAGLE RIVER LOOP ROAD TO YELLOWSTONE DRIVE
PM&E # 13-36

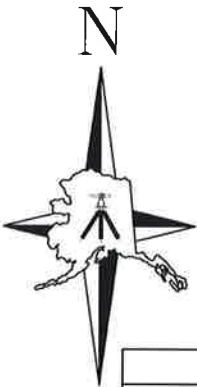


OWNER'S INITIALS: _____

PAGE ___ OF ___ DATED _____

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ROW ACQUISITION TYPE: PUE
ROW ACQUISITION AREA: ± 10,824 S.F.
SCALE: 1"=100' DATE: 03-03-16
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EXHIBIT B - PUE P-1E - BEST INTEREST DECISION - YOSEMITE DRIVE ROW TRANSFER OF INTEREST AND EXPANSION

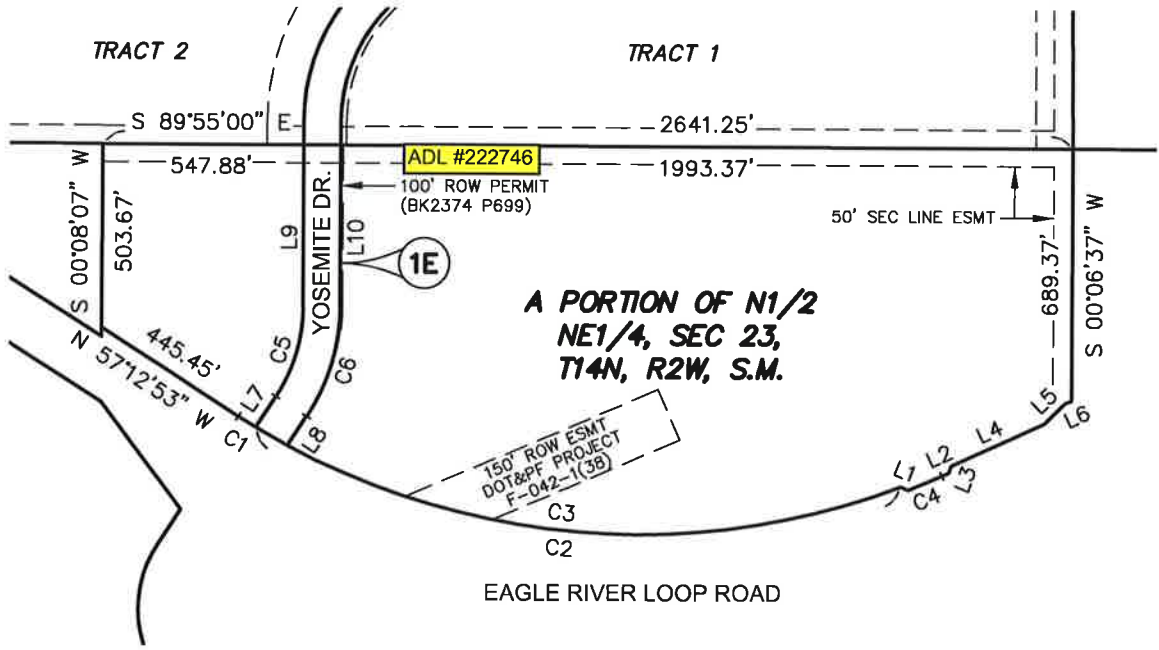


PUBLIC USE EASEMENT

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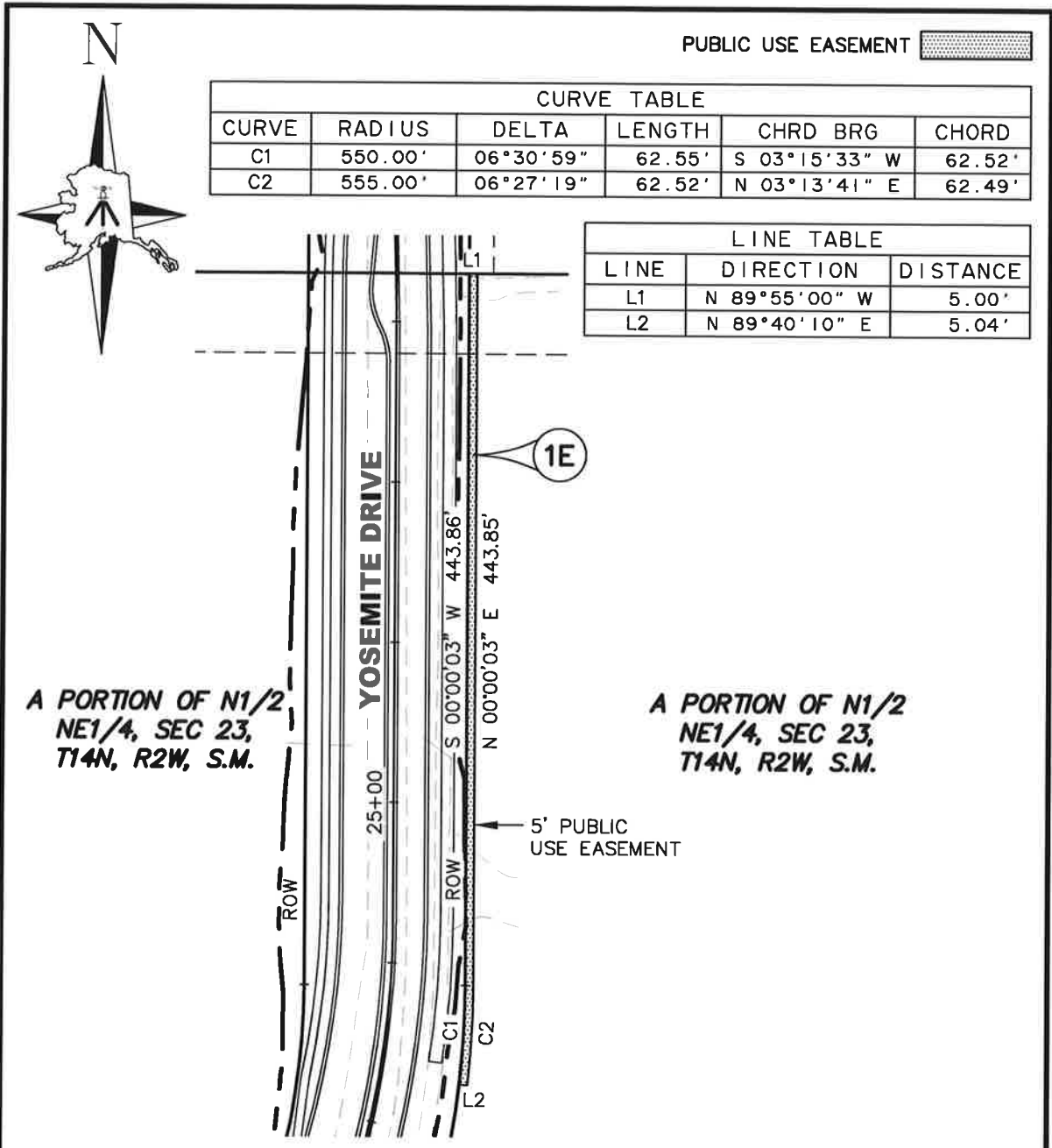


BASIS OF BEARINGS: PLAT# 2015-101

SHEET 1 OF 2


PUBLIC WORKS DEPARTMENT PROJECT MANAGEMENT & ENGINEERING DIVISION		YOSEMITE DRIVE UPGRADE EAGLE RIVER LOOP ROAD TO YELLOWSTONE DRIVE PM&E # 13-36	
	OWNER'S INITIALS: _____	EXISTING PARCEL AREA: ± 54.84 AC.	ROW ACQUISITION TYPE: PUE
	PAGE ___ OF ___ DATED _____	ROW ACQUISITION AREA: ± 2532 S.F.	SCALE: 1"=500' DATE: 03-03-16
		GRID: SW0251	PARCEL No. 1E

EXHIBIT B - PUE P-1E - BEST INTEREST DECISION - YOSEMITE DRIVE ROW TRANSFER OF INTEREST AND EXPANSION



BASIS OF BEARINGS: PLAT# 2015-101

SHEET 2 OF 2

PUBLIC WORKS DEPARTMENT PROJECT MANAGEMENT & ENGINEERING DIVISION		YOSEMITE DRIVE UPGRADE EAGLE RIVER LOOP ROAD TO YELLOWSTONE DRIVE PM&E # 13-36	
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	PAGE ___ OF ___ DATED _____	ROW ACQUISITION TYPE:	PUE
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		GRID: SW0251	PARCEL No. 1E