

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

ADL 232731
Regional Manager's Decision
AS 38.05.850
Public Access Easement
Segment of Subdivision Access Road

Project Overview:

The Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Southcentral Regional Office (SCRO) received an application on February 2, 2017 from Dan S. Rough requesting authorization for a segment of an existing road on State-owned, DMLW-managed uplands near Seward, Alaska. The road segment connects two portions of an access road through a parcel owned by Mr. Rough (identified as Tract C1 of the Lost Lake Subdivision No. 5) that is in the early stages of subdivision. The portion of road was mistakenly constructed on State land due to an erroneous flagging of the north boundary of Tract C1. The road begins in Tract C1 at a point connecting to existing public access (a right-of-way platted as Hayden Berlin Road/Trail Head Road), leaves Tract C1 and enters State land, and then reenters Tract C1 and ends in a cul-de-sac. Road construction on the segment under application is largely complete. See Figure 1 for the requested easement location.

Scope of Decision:

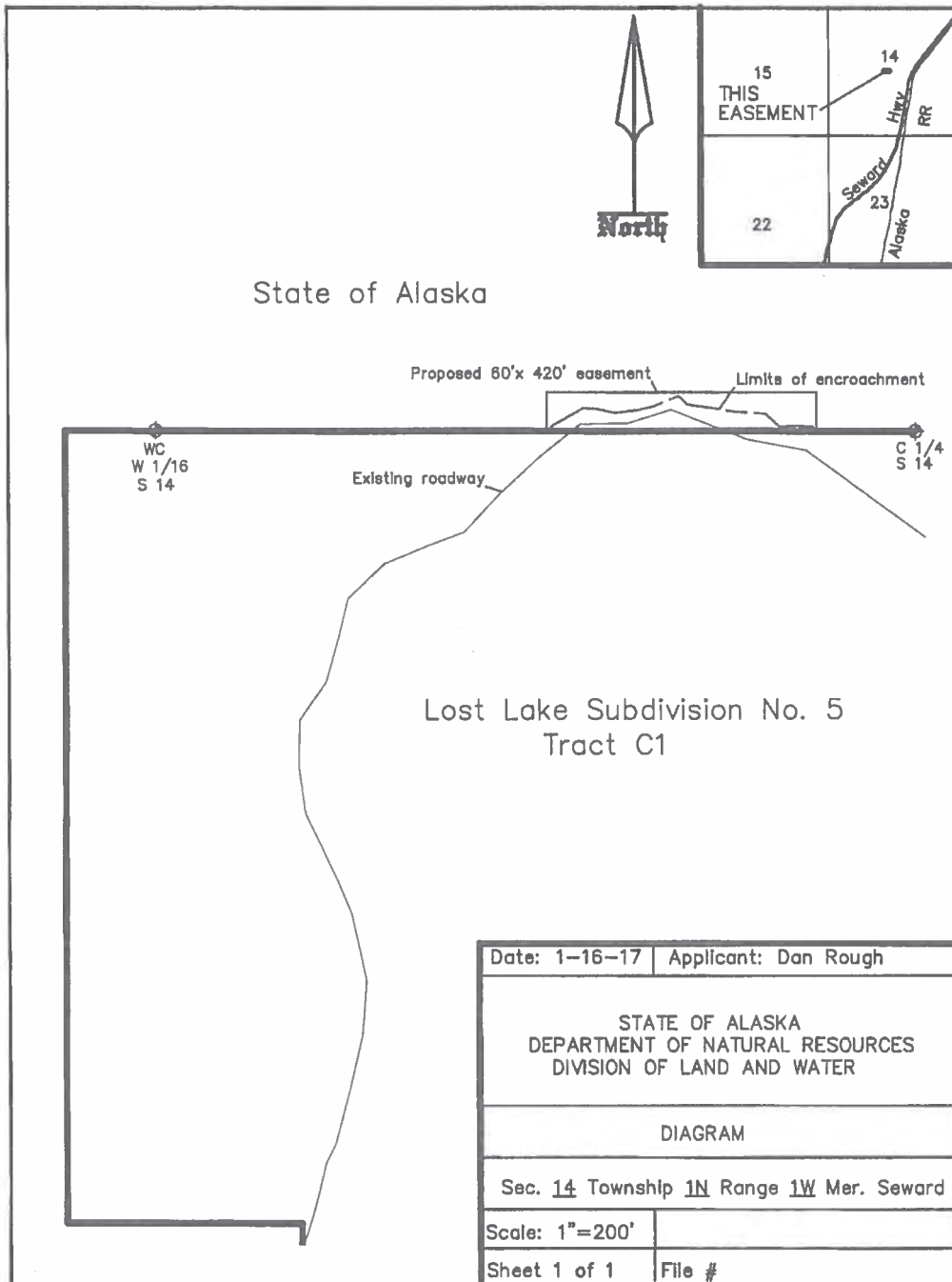
The scope of this decision is limited to the determination of whether it is in the State's interest to issue a public access easement approximately 420 feet in length and approximately 60 feet in width, occupying approximately 0.579 acres of State land for a segment of an access road. All other aspects of the project are outside the scope of this decision.

Location:

- Geographic: The request pertains to lands near Seward, Alaska.
- Legal Description: The requested easement is proposed to cross State-owned, DMLW-managed uplands located within
 - The SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 14 of Township 1 North, Range 1 West, Seward Meridian, Alaska.
- Width and Acreage: The request is for a public access easement to be approximately 420 feet in length, approximately 60 feet in width, encompassing approximately 0.579 acres. The applicant verbally notified SCRO on June 27, 2017 that additional width may be necessary, and therefore, the 60-foot width requested is approximate. The exact area and location of the final easement will be determined subsequent to DMLW's

approval of an as-built survey and shall encompass the full extent of the constructed road.

Figure 1: Applicant-supplied map of ADL 232731.



Title:

The State of Alaska received Tentative Approval to the subject lands within Section 14 of Township 1 North, Range 1 West, Seward Meridian, Alaska on July 23, 1986 under Tentative Approval No. 1986-0053, which is serialized by DNR as NFCG 189.

Authority:

DNR is authorized to execute easements on State land under the provisions of AS 38.05.850 (Permits). Also referred to in this decision are AS 38.05.860 (Deposits), 11 AAC 02 (Appeals), 11 AAC 05.010 (Fees), 11 AAC 96.060 (Performance Guaranty), and 11 AAC 96.065 (Insurance).

State Plans and Classifications:

The requested easement is located within the Kenai Area Plan (KAP) Region 3, within Management Unit 369, which is designated as Public Recreation and Tourism—dispersed use and classified as Public Recreation Land. Chapter 3 of the plan notes that the resources and uses for which unit 369 is designated are the Lost Lake Trail and its viewshed, the Seward Highway Scenic Byway, and the Alaska Railroad. Other resources and uses for the unit are timber harvest, wildlife habitat, and cultural sites. The specific management intent for the unit is timber harvest and management of significant amounts of beetle-killed spruce, and reference is made to Seward Highway Scenic Byway Corridor Preservation Area (SHSBCPA) guidelines for general management intent of the unit. Region 3 management constraints and considerations include the Seward Highway Scenic Byway Corridor Partnership Plan (SHSBCPP) and the Kenai Mountains—Turnagain Arm National Heritage Area (KMTA NHA). Chapter 2 of the KAP includes guidelines for management of Public Recreation and Tourism units, the Seward Highway Scenic Byway, and trails and access.

Chapter 2 Public Recreation and Tourism management guidelines for scenic resources direct that facilities should be located and designed to blend in with the natural surroundings.

The SHSBCPP identifies several issues and recommendations concerning scenic resources. Some of the strategies from the plan have been incorporated into KAP Public Recreation and Tourism management guidelines. Chapter 2 Public Recreation and Tourism management guidelines for the Seward Highway Scenic Byway state that SHSBCPAs should remain free of development that is visible from the highway. Infrastructure projects should be carefully designed to avoid or minimize visual intrusions. Complementary uses are allowed within Corridor Preservation Areas but will be constructed with maximum consideration given to maintaining the integrity of the area. The road segment under this application is not visible from the highway. The Department

of Transportation and Public Facilities (DOT&PF) was provided the Public and Agency Notice and did not provide a comment.

The Lost Lake Trail is a year-round, multi-use trail maintained by the US Forest Service (USFS) and is part of the Iditarod National Historic Trail (INHT) system. SCRO has issued an Entry Authorization to USFS for a portion of this trail in Section 14 of Township 1 North, Range 1 West, Seward Meridian under ADL 228890-B. ADL 228890-B is a 100-foot wide public right-of-way for the trail within a 1,000-foot wide buffer to be reserved to the State that the State is also subject to in TA 1986-0053. The requested easement is outside of ADL 228890-B and the 1,000-foot buffer and the road segment does not interfere with the Lost Lake Trail viewshed. The USFS was provided the Public and Agency Notice and did not provide a comment.

Unit 369 is located within the boundary of the KMTA NHA. KMTA NHA is administered by the National Park Service (NPS), though it is not a NPS unit, and the KMTA Corridor Communities Association (KMTA CCA) serves as the coordinating entity. Designation as a NHA confers no authority to manage or regulate land use but rather provides assistance to local communities to preserve their heritage resources. The KMTA CCA was provided a copy of the Public and Agency Notice and did not provide a comment.

A portion of the Alaska Railroad is located within unit 369. The requested easement is not located in the immediate vicinity of the Railroad right-of-way, and therefore does not impact the Alaska Railroad.

SCRO provided the Public and Agency Notice to the agencies that manage wildlife and habitat management (the Alaska Department of Fish and Game (ADF&G)), forest and timber (the Division of Forestry (DOF)), and historic sites (the Division of Parks and Recreation Office of History and Archaeology (DPOR OHA)). DOF, and OHA did not provide comments. ADF&G submitted a comment of non-objection.

In consideration of these factors, ADL 232731 is compatible with the land use guidelines described in the Kenai Area Plan.

Administrative Record:

The administrative record for this request for a public access easement for a road segment is ADL 232731.

Public and Agency Notice:

SCRO conducted a combined public and agency notice for ADL 232731 from May 3, 2017 to June 2, 2017. The notice was posted on the State of Alaska Online Public Notices Website and sent to the following:

- Seward US Post Office
- Applicant
- KPB Planning, Land Management, and Kenai River Center
- City of Seward
- Chugach Alaska Corporation
- USFS Chugach National Forest and Seward District Ranger
- US Army Corps of Engineers Kenai Field Office
- DNR
 - DMLW Survey Section and Land Sales Section
 - DPOR OHA
 - Division of Oil and Gas (DOG) Permitting Section and State Pipeline Coordinator's Section (SPCS)
 - DOF Kenai Office
- Department of Environmental Conservation (DEC) Division of Water and Division of Environmental Health
- Department of Commerce, Community, and Economic Development Division of Community and Regional Affairs
- ADF&G Division of Habitat and Division of Wildlife Conservation
- Mental Health Trust Land Office (MHTLO)
- DOT&PF Central Region Planning

Additionally, the KMTA CCA was provided a copy of the notice on June 12, 2017 when evaluation of the KAP illuminated the KMTA NHA as a management consideration. KMTA CCA did not provide a comment.

Comments of non-objection were issued by the DOG State Pipeline Coordinator's Section; the DEC Drinking Water Protection Group; the MHTLO, and ADF&G. No other comments were received.

Term:

The authorization requested under ADL 232731 will be issued for an indefinite length of time and may be revoked for non-compliance with the terms identified in relevant Departmental

authorizations issued in association with the requested land use approval, if the area described is no longer used for its intended purpose, or if a higher and better use for the project area is established as determined by the DMLW Director.

The Entry Authorization (EA) will be issued for a term ending 5 years from the effective date of this decision for the purpose of constructing, surveying, operating, and maintaining the road segment prior to DMLW's issuance of a public access easement. An extension of the EA may be granted at the written request of the applicant if granting the extension is deemed appropriate by SCRO, and may be subject to applicable fees. If an extension is required, the applicant must contact SCRO no later than 30 days prior to the expiration of the EA, and certify there have been no changes to the approved development plan.

SCRO may rescind this decision by written notification if, after 1 year from the effective date of this decision, the applicant has not completed all requirements outlined in this decision for issuance of the EA and returned to SCRO an EA signed by the applicant. At the applicant's request and SCRO concurrence, additional time may be allotted to complete these requirements.

Following termination of ADL 232731, whether by abandonment, revocation, or any other means, Mr. Rough shall restore the site to a condition that is acceptable to SCRO.

Third Party Interests:

A review of information available in DNR's Land Administration System records has identified no third party interest(s).

Management Issues:

The issuance of a public access easement under ADL 232731 is dependent upon the provision of legal public access to ADL 232731. Platted public access to ADL 232731 is currently anticipated via the subdivision of Tract C1 through the KPB Platting Board and is the preferred method providing for access to ADL 232731. The applicant may also provide a general dedication of public access no less than 60 feet in width through Tract C1 from Hayden Berlin Road/Trail Head Road to ADL 232731 if the platting process is concluded without acceptance of a plat.

Economic Benefit and Development of State Resources:

In accordance with AS 38.05.850, SCRO considers three criteria to determine if this project provides the greatest economic benefit to the State and the development of its natural

resources: direct economic benefit to the State, indirect economic benefit to the State, and encouraging development of the State's resources.

The EA fees of \$100 annually and the one-time easement issuance fee of approximately \$50 for ADL 232731 represent a direct economic benefit to the State. The road segment will allow for the development of private land, which will support the continued growth of Seward's economy, thereby providing an indirect economic benefit to the State. Improved access to State lands will facilitate the development of the State's resources. Because there are no competing projects which are incompatible with this proposal, and in consideration of the benefits described above, this project represents the greatest economic benefit to the State.

Other Authorizations:

The applicant is responsible for obtaining and complying with all other required authorizations for this activity, and the failure to do so shall constitute a violation of ADL 232731 and may be subject to action by SCRO.

Survey:

A DMLW-approved as-built survey is required for ADL 232731 to determine the proper location and acreage of installed improvements and the associated easement on State-owned, DMLW-managed lands. Mr. Rough must acquire survey instructions and coordinate with the DMLW Survey Section for the as-built process. A survey instruction fee per 11 AAC 05.010(a)(13)(A) may be applicable. A draft must be submitted to the Survey Section prior to the expiration of the EA and a final as-built survey must be approved by DMLW before issuance of the final easement document.

Fees:

ADL 232731 will be subject to the following fees, which are subject to adjustment if the regulation(s) pertaining to the fee(s) change during the term of the EA and/or easement:

- EA for construction, survey, operation, and maintenance activities within approximately 0.579 acres in accordance with 11 AAC 05.010(e)(9): an annual interim land use fee of \$50 per acre and no less than \$100, which is calculated to be \$100.
- Public access easement for the operation and maintenance of improvements within approximately 0.579 acres in accordance with 11 AAC 05.010(e)(12): a one-time issuance fee of \$50 per acre, calculated to be \$50.
- Appropriate recording fees to have the easement recorded by DMLW.

History of Compliance:

DNR Land Administration records indicate that Mr. Rough is in a state of compliance with the terms of other DMLW-issued authorizations.

Performance Guaranty:

To fulfill the requirement of a performance guaranty as described in 11 AAC 96.060, Mr. Rough is required to submit a performance guaranty in the amount of \$2,000.00 to ensure completion of EA requirements. These funds will also serve as a survey deposit (per AS 38.05.860) and may be reduced one time during the term of the EA by an amount equal to payments made by Mr. Rough to a licensed surveyor under contract for completion of an as-built survey of ADL 232731 in accordance with survey instructions issued by the DMLW Survey Section as described herein. This performance guaranty shall remain in place during the term of the EA and will be subject to release upon the acceptance of a DMLW-approved as-built survey and the fulfillment of all conditions and stipulations of this decision and the EA. The guaranty may also be adjusted to reflect updates and changes in the associated project, and the applicant may be required to furnish an additional performance guaranty if SCRO determines there to be additional risk to the State. The guaranty may be utilized by DMLW to cover actual costs incurred by the State to pay for necessary corrective actions in the event the applicant does not comply with site utilization and restoration requirements and other stipulations contained in the EA. An additional performance guaranty may be required for an extension of the EA beyond the 5 years proposed under this decision.

Insurance:

In accordance with 11 AAC 96.065, Mr. Rough shall be required to submit proof of insurance to protect the State from risks associated with the planned activities under the EA for ADL 232731. Mr. Rough is responsible for maintaining the insurance necessary during the term of the EA. The insurance may be adjusted to reflect updates and changes in the associated project, and the applicant may be required to furnish additional insurance if SCRO determines there to be additional risk to the State. A certificate of insurance listing the State of Alaska, Department of Natural Resources as an additional insured on the policy, or other insurance acceptable to the State, must be submitted to SCRO prior to entry on State land and maintained throughout the term of the EA.

Proposal and Recommendation for Issuance of Entry Authorization:

I recommend issuance of an EA to Mr. Rough to enter upon State-owned, DMLW-managed land within Section 14 of Township 1 North, Range 1 West, Seward Meridian, Alaska for the purpose of constructing, surveying, operating, and maintaining ADL 232731 prior to DMLW's issuance of a public access easement. Upon DMLW receipt of the required performance guaranty, proof of insurance, and land use fees, the EA will be issued for a term ending 5 years from the effective date of this decision.

Authorization of the activities proposed in ADL 232731 will occupy approximately 0.579 acres of State-owned, DMLW-managed land as depicted in Figure 1 on page 2 of this document. A finalized easement will not be granted until the applicant has conformed to all terms and conditions of this decision and the EA.

Proposal and Recommendation for Issuance of Public Access Easement:

In consideration of all events and criteria described above, it is my determination that this project is consistent with the overall classification and management intent for this land and would be a benefit to the State of Alaska. Therefore, I recommend issuance of a public access easement pursuant to AS 38.05.850, upon satisfactory completion of the project in conformance with all the terms and conditions of this decision and the EA. The easement will be held by DMLW for the benefit of the public. The easement will be issued for an indefinite term that may be terminated if a higher and better economic use for the project area is established as determined by the DMLW Director (AS 38.05.850), if the land is no longer used for the above stated purpose, or for non-compliance with the terms identified in relevant Departmental authorizations issued in association with the requested land use approval.

If issued, the easement will be approximately 420 feet in length and approximately 60 feet in width, occupying approximately 0.579 acres of State-owned land. The exact size of the easement will be as shown on an as-built survey approved by DMLW. This public access easement will authorize the operation and maintenance of the road segment described in ADL 232731. SCRO assumes no responsibility for maintenance or liability for injury or damages attributable to the easement ADL 232731.

Signature page follows.



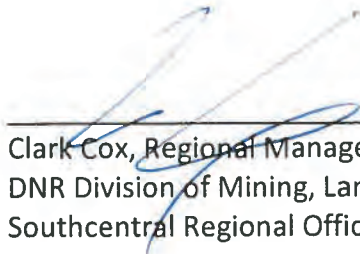
Cori Kindred, Natural Resource Specialist
DNR Division of Mining, Land, and Water
Southcentral Regional Office

9/6/2017

Date

Decision:

When adjudicating an easement authorization pursuant to AS 38.05.850, DNR seeks to responsibly develop Alaska's resources by making them available for maximum use and benefit consistent with the public interest. In consideration of all events and criteria listed above, SCRO has determined that the authorizations to be granted under ADL 232731 are consistent with DNR's mission. It is my decision that this project is consistent with the overall classification and management intent for this land. SCRO will issue a public access easement, pursuant to AS 38.05.850, once the applicant has conformed to all terms and conditions of this decision and the EA.



Clark Cox, Regional Manager
DNR Division of Mining, Land, and Water
Southcentral Regional Office

9-6-17

Date

Appeal Process:

A person affected by this decision may appeal it in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of "issuance" of this decision, as defined in 11 AAC 02.040 (c) and (d), and may be mailed or delivered to the Commissioner of the Department of Natural Resources, 550 W.7th Avenue, Suite 1400, Anchorage, Alaska 99501, faxed to (907) 269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. If no appeal is filed by that date, this decision goes into effect as a final order and decision 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.