

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

ADL 232680
Regional Manager's Decision
AS 38.05.850
Public Access Easement
Saltery Cove Road on Kodiak Island

Project Overview:

On September 16, 2016, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Southcentral Region Office (SCRO) received an application from Kodiak Island Borough (KIB) that requests approval of a public access easement across State-owned, DMLW-managed lands on Kodiak Island, Alaska. The requested easement is proposed to be centered over a portion of a pre-existing route generally referenced as Saltery Cove Road that provides access from the Alaska Department of Transportation and Public Facilities (DOTPF) maintained Chiniak Highway to Ugak Bay and adjacent lands. While the route has been in use since at least the mid-1940s, no easement is known to exist for the road west of the American River Pass (See Figure 1). As part of the application for easement, KIB proposes to define the alignment of the trail where it has braided with use and harden surfaces, making the route more suitable for current traffic and to prevent habitat degradation. The proposed development is part of KIB's 2011 Kodiak Road Systems Trails Master Plan (KRSTMP).

Scope of Decision:

The scope of this decision is limited to the determination of whether it is in the State's interest to authorize a public access easement for a portion of the pre-existing road. The proposed easement will be 100 feet wide except where additional area is required for cut and fill and approximately 190,000 feet length, occupying approximately 438 acres of State land located within and between Section 16, Township 30 South, Range 21 West, Seward Meridian, Alaska and Section 12, Township 31 South, Range 22 West, Seward Meridian, Alaska. All other aspects of the project are outside the scope of this decision.

Location:

Geographic: The proposed easement is located on the Kodiak Island, south of Chiniak Bay.

Legal Description: The requested easement will be situated on State-owned, DMLW-managed uplands and/or shore lands located within:

- W ½ of Section 16, E ½ of Section 17, E ½ of Section 20, W ½ of Section 21, Section 29, E ½ of Section 31 and W ½ of Section 32, all of Township 30 South, Range 21 West Seward Meridian, Alaska.
- Section 6 and 7 of Township 31 South, Range 21 West Seward Meridian, Alaska.
- E ½ of Section 12 of Township 31 South, Range 22 West Seward Meridian, Alaska.

Width and Acreage: The request is for the issuance of a public access easement 100 feet wide and approximately 190,000¹ feet in length encompassing an area of approximately 438 acres. If the as-built survey identifies wider areas used for cut and fill, those portions of this authorization will exceed 100 feet. The exact area and location of the final easement will be determined subsequent to DMLW's receipt of an approved as-built survey.

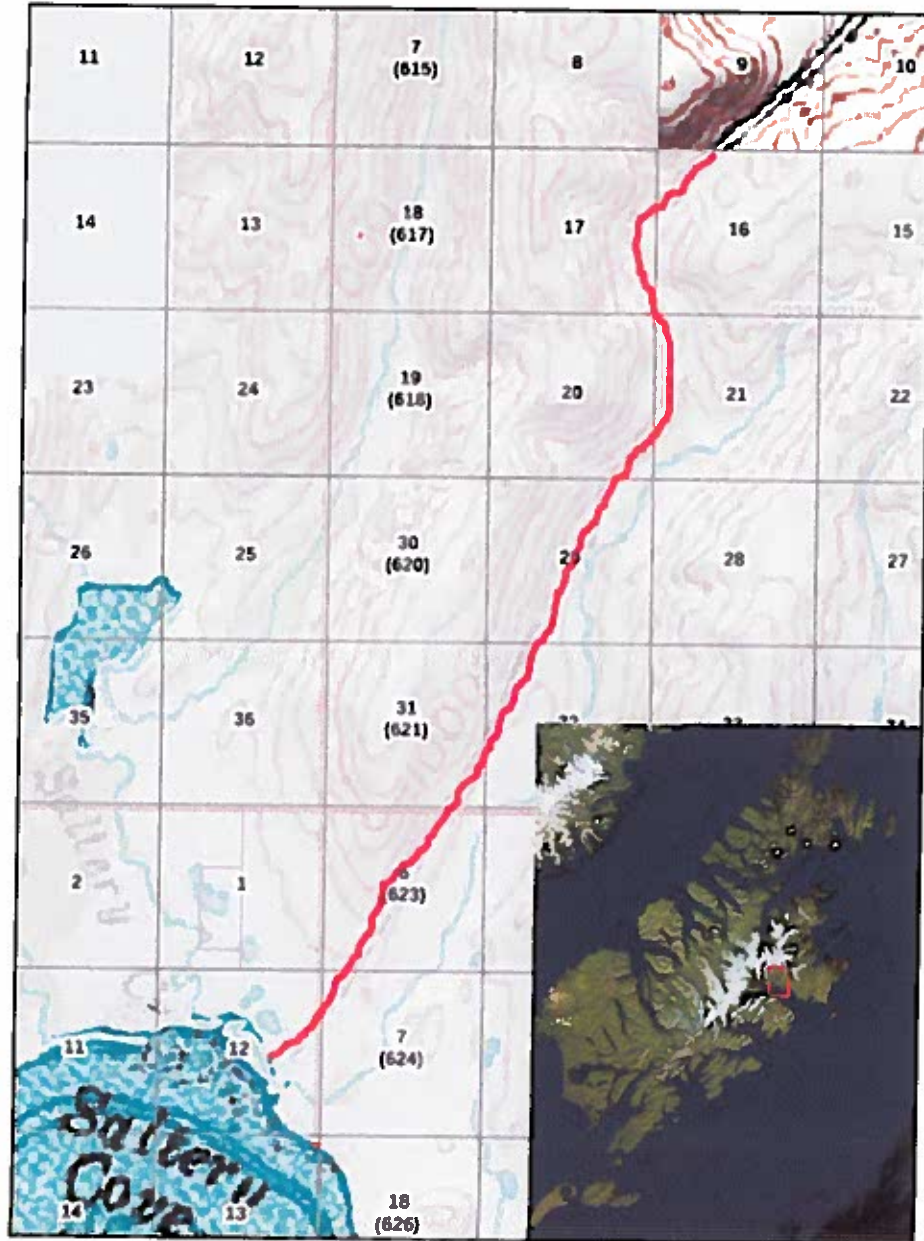


Figure 1: ADL 232680, Saltery Cove Road is marked in red.

¹ Rounded to 190,000 here, but 190,882 per application.

Title:

Sections 16, 17, 20, 21, 29, 31 and 32 of Township 30 South, Range 21 West, Seward Meridian were conveyed to the State of Alaska by means of Federal Patent 50-89-0074 issued on December 2, 1988. The pertinent DNR casefile is GS 1561.

Sections 6 and 7 of Township 31 South, Range 21 West, Seward Meridian and Government Lot 1 of Section 12 of Township 31 South, Range 22 West Seward Meridian were conveyed to the State of Alaska by means of Federal Patent 50-88-0002 issued on October 21, 1987. The pertinent DNR casefile is GS 1563.

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 96.020 (Generally Allowed Uses), 11 AAC 96.060 (Performance Guaranty), and 11 AAC 96.065 (Insurance).

State Plans and Classifications:

The requested easement is located on lands described by the Kodiak Area Plan as Kodiak Region, Subunits K-75, and K-50B. K-75 is designated as Grazing (Gr) and Public Recreation & Tourism-Dispersed (Rd) and is classified as Grazing Land and Public Recreation Land. The Kodiak Area Plan notes that Subunit K-75, as well as neighboring Subunits K-74, K-73, K-50A and K-51A are to be managed to an overall theme, "to protect the important areas of habitat, maintain opportunities for public recreation, and provide for the continued grazing uses". K-50B is designated as General Use (Gu) and is classified as Resources Management Land. Under the Gr and Rd designations, the primary purpose of the K-75 Subunit is grazing and dispersed public recreation. Under the Gu designation, the primary purpose of the K-50B parcel is primarily habitat protection and dispersed public recreation, however, proposed authorizations should consider winter range for deer, brown bear denning sites, and anadromous streams and note that grazing operations do not occur within this unit. This mirrors the classification under resource management land.

Additionally, the plan provides instructions that "DNR will coordinate with the Kodiak Island Borough in the development of a comprehensive trails plan and should implement those recommendations pertinent to routing, signing, and design to the extent feasible...". As this application implements the KIB KRSTMP, provides legal access to grazing lands, and provides a mechanism by which the Kodiak Island Borough can realign and harden the surface of the existing road, therefore decreasing the impacts of vehicle traffic on surrounding wildlife habitat, ADL 232680 is compatible with the plan.

Administrative Record:

The administrative record for this application for a public access easement is ADL 232680.

Third Party Interests:

A review of information available in DNR's Land Administration System records has identified one (1) third party interests, Joanne Dorman, a grazing lease holder. DNR has notified Joanne Dorman of the proposed easement but has received no comment. The proposed easement is compatible with the grazing lease as Saltery Cove road, on which the easement will be centered, is in existence and pre-dates the grazing lease.

Public and Agency Notice:

On October 5, 2016, SCRO issued a 30-day public and agency notice which was distributed to the following local, state, and federal entities that may have had an interest in the project. The notice was also posted for a period of 30 days on the State of Alaska Online Public Notices Website and at US post offices located in the City of Kodiak at 419 Lower Mill Road and 111 Rezandof Drive.

State of Alaska:

Alaska Department of Environmental Conservation, Division of Environmental Health, Drinking Water Program

Alaska Department of Fish and Game (ADF&G), Division of Wildlife Conservation; Access Defense Program DOTPF, South-coast Office

DNR Division of Parks and Outdoor Recreation, State Historical Preservation Office

DNR Division of Oil and Gas, State Pipeline Coordinator's Section

DNR Division of Mining, Land, and Water, Water Section; Survey Section; Resource Assessment and Development Section, Municipal Entitlement Unit; Southcentral Region Office Leasing Unit

DNR Division of Forestry, Kenai/Kodiak Office

Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs

Mental Health Trust Land Office

Federal Agencies:

United States Environmental Protection Agency

United States Army Corps of Engineers

Local Entities:

Leisnoi Incorporated

Koniag Incorporated

Joanne Dorman, grazing lease holder

City of Kodiak

Kodiak Chamber of Commerce

Kodiak Island Borough, Resource Management Department

The following agencies responded with statements of no comment or non-objection:

- The Alaska Department of Transport and Public Facilities
- Alaska Mental Health Trust

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- State Pipeline Coordinator's Section (SPCS) of the Division of Oil and Gas
- Department of Environmental Conservation, Drinking Water Protection

Additionally, Leisonoi Incorporated provided a letter of support for the project.

On November 7, 2016 Alaska Department of Fish and Game (ADF&G) stated that the proposed easement area contained important anadromous streams. As such they recommend that *"any road improvement or construction activities occurring below the ordinary high water mark of a catalogued waterbody that could affect the spawning, rearing, or migration of anadromous fishes, or potentially provide blockages to the efficient passage of resident fish species, are regulated by state law and require a Fish Habitat Permit from ADF&G- Division of Habitat. Road improvements at stream crossings should utilize the proper structures that allow for effective fish passage."* The applicant has been notified of the additional authorization and has been advised to co-ordinate with ADF&G in the road's location and hardening project. Outside the above comment, ADF&G has no objection to the proposed easement.

On November 7, 2016, Lucas Smith, a member of the public, submitted a comment with concerns regarding the potential impact on fish habitat and access to private land from trails adjoining Saltery Cove Road. Mr. Smith observes that the adjoining trails *"...have been washed out and eroded by the ever changing course of the river and natural erosion. As a result, individuals have repeatedly attempted to create their own paths, often directly through delicate salmon streams"* and that, *"While the proposed easement appears to exist solely upon an existing road on land owned by the State of Alaska...the proposed easement within this public notice will encourage more traffic to tread upon private property and damage these salmon habitats"*, and further recommends surveying these trails.

Other existing roads and easements, including the trails described by Mr. Smith, which are not part of the Saltery Cove Road west of American Pass, are outside the scope of this decision. However, SCRO has contacted Mr. Smith for additional information regarding the condition of these trails in the Saltery Cove area. Where SCRO is the manager of these improvements, Mr. Smith may request authorization to develop or improve the access through this office. Otherwise, SCRO will attempt to direct Mr. Smith to the actual manager of the improvements.

The issuance of an easement under ADL 232680 will facilitate the hardening and maintenance of this route and subsequently can help address trail degradation such as that described by Mr. Smith within the project area. As described in the comment above, coordination with ADF&G is required where road improvement activities occur below Ordinary High Water (OHW) of ADF&G-catalogued waters.

No other comments were received.

Term:

The requested easement under ADL 232680 will be issued for an indefinite period of time that may be revoked for cause, if the area described is no longer used for the purpose intended, 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 3 years from the effective date of this decision for the purpose of constructing, locating, operating, and maintaining ADL 232680 prior to DMLW's issuance of a public access easement. Extensions to the EA may be granted at the request of the applicant if granting the extension is deemed appropriate by SCRO. If an extension is required, the applicant must contact SCRO no later than 30 days prior to the expiration of the EA.

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. Additional time may be allotted to complete these requirements at the applicant's request and concurrence of the AO.

Following termination of ADL 232680, whether by abandonment, revocation, or any other means, KIB shall restore the site to a condition that is acceptable to SCRO.

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.

Approval of the proposed easement encourages the development of the State's resources by ensuring legal access to area grazing lands and promotion of the use and enjoyment of the State's recreational resources. Therefore, as 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:

KIB is responsible for obtaining and complying with all other required authorizations for this activity. Noted authorizations include:

- ADF&G Fish Habitat Permit.

The failure to obtain or comply with said authorizations shall constitute a violation of ADL 232680 and may be subject to action by SCRO.

Survey:

A DMLW-approved as-built survey is required for ADL 232680 to determine the proper location and acreage of installed improvements and the associated easement on State-owned, DMLW-managed lands. KIB 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:

Per 11 AAC 05.010 (c), the interim and final one-time land use fee(s) for a public access easement are waived since the easement is in the public interest and the applicant is a municipal agency. However, the applicant shall pay the appropriate recording fees as determined based on the current statute to have the easement document recorded by DMLW.

History of Compliance:

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

Performance Guaranty and Insurance:

In accordance with 11 AAC 96.065, the requirements for insurance and a performance guaranty for ADL 232680 are met by the self-insurance of the applicant, as a political subdivision of the state. DMLW reserves the right to request insurance and a performance guaranty during the term of this authorization.

Proposal and Recommendation for Issuance of Entry Authorization:

I recommend issuance of an EA to KIB to enter upon State-owned, DMLW-managed land within:

- Sections 16, 17, 20, 21, 29, 31, and 32, of Township 30 South, Range 21 West, Seward Meridian
- Sections 6 and 7 both of Township 31 South, Range 21 West, Seward Meridian
- Section 12, Township 31 South, Range 22 West, Seward Meridian


for the purpose of constructing, locating, operating, and maintaining ADL 232680 prior to DMLW's issuance of a public access easement. The EA will be issued for a term ending 3 years from the effective date of this decision.

Authorization of the activities proposed in ADL 232680 will occupy approximately 438 acres of State-owned, DMLW-managed land. 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 to KIB 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 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 if the land is no longer used for the above stated purpose or for non-compliance with the terms identified in relevant DNR authorizations.

If issued, the easement will be 100 feet wide except where additional area is required for cut and fill and approximately 190,000 feet in length, occupying approximately 438 acres of State-owned, DMLW-managed land. The exact size of the easement will be as shown on an as-built survey accepted by DMLW. This public access easement will authorize the operation and maintenance of the road described in ADL 232680. SCRO assumes no responsibility for maintenance or liability for injury or damages attributable to the easement ADL 232680.



Stuart Greenfield, Natural Resource Specialist
DNR Division of Mining, Land, and Water
Southcentral Region Office

11-17-16

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 232680 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 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 Region Office

11-17-16

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.