

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

ADL 232821
Preliminary Decision
AS 38.04.058, AS 38.05.035 (a)(2), 11 AAC 51.100 (a)
Indefinite Section Line Easement Closure
Through Spring Creek Correctional Center

Petitioned Action:

On February 21st, 2017, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Southcentral Region Office (SCRO) received a petition from the Department of Corrections (DOC) to indefinitely close a portion of DMLW-managed section line easement (SLE) that runs across a DOC-managed prison facility located on State owned land in the City of Seward. The Department of Corrections has requested this closure due to the co-location of this SLE with the prison facilities. This closure is being considered to protect public safety as the State presently manages this area for a use that makes any public occupation hazardous. Vacation of the easement is not being considered at this time as the prison is not expected to operate in perpetuity and the SLE may be utilized when the lands are repurposed.

Administrative Record:

The administrative record for this petition for SLE closure is ADL 232821.

Scope of Decision:

The scope of this decision is limited to the determination of whether to indefinitely close a portion of north-south aligned SLE, further described in the 'Location' section of this document. Any other easements that are co-located with this SLE and are managed by DMLW are also included in this decision. All other aspects of the project are outside the scope of this decision.

Location and Interest:

Geographic: The portion of SLE proposed for closure is located within the Fourth of July Creek area adjacent to Resurrection Bay in Southcentral Alaska.

Borough: The portion of SLE proposed for closure is located within both the Kenai Peninsula Borough (KPB) and the corporate boundary of the City of Seward.

Underlying Interest: Parcel A-1, Spring Creek Correctional Facility Site Replat No. 1 (hereafter referred to as the subject parcel)¹ is owned by the State of Alaska.

State Easement Interest: 50-foot wide SLEs exist within the subject parcel pursuant to AS 19.10.010. The portion of SLE considered herein is located between the northern boundary of Tract B, Fourth of July Creek Tracts (SRD Plat 84-6) and the southern boundary of a state SLE attached to the protracted section line common to Sections 8 & 17 and 7 & 18, Township 1 South, Range 1 East, Seward Meridian (Figure 1).

¹ SRD Plat 2016-8

Legal Authority:

The Division of Mining, Land and Water is authorized to close DMLW managed easements under the provisions of AS 38.05.035(a)(2) and (a)(7) (Powers and Duties of the Director). Additionally, DNR may close easements under the provisions of AS 38.04.058 (Restriction On Easement or Right-of-Way Use) and 11 AAC 51.100(a) (Management of Public Easements). AS 38.04.055 (Access to Private Use Areas), AS 38.04.200 (Traditional Means of Access), AS 38.05.127 (Access to Navigable and Public Water) and AS 38.05.910 (Policy) are also referenced in this decision.

Use of Interest:

Practicality of Use: Use of the SLE is practical as it traverses relatively flat upland land. However, use is presently impractical due to the enclosure of the easement within or directly adjacent to a State prison facility.

Existing Public Use: A field inspection of the area was conducted by SCRO staff June 24th, 2014. Staff observed that no public access related improvements have been constructed within the portion of the SLE proposed for closure, nor was there evidence of public vehicles, pedestrians or other members of the public using the portion of SLE in question; the majority of the SLE proposed for closure falls within the area enclosed by the prison fence. Staff also noted that developed public access exists to all parcels otherwise served by the portion of SLE considered here.

Alternate Route: The proposed alternate route consists of the constructed rights-of-way (ROW) of Nash Road (SRD Plat 2004-01, etc.), the constructed platted dedications of Jellison Avenue and Delphin Street (SRD Plat 97-27), and AS 38.05.127 easements located along the northern shore of Fourth of July Creek (partially depicted on SRD Plat 98-04). Access also exists along undeveloped 50 foot wide SLEs that cross State and Municipal owned lands located north of the fenced portion of the prison facility (Figure 1).

Reason for Petition:

The State acquired the subject parcel expressly for the operation of the Spring Creek Correctional Center². The Department of Corrections, which operates the facility, has requested that DNR agree to the proposed closure as the presence of the prison precludes any safe use of the SLE. Department of Natural Resources staff concur that the co-location of the prison and SLE creates a public safety hazard and that per AS 38.05.910, the State's interest in ensuring the continued operation of the prison outweighs the benefit of providing for public access over the SLE near or through the facility.

AS 38.04.058 provides that any restriction must be "*narrowly tailored to achieve the protection of public safety and property while preserving access to the maximum extent practicable.*" Any closure must therefore be limited to the minimum area necessary to address the public safety hazard. The Department of Corrections has requested to close only those portions of SLE that are within and directly adjacent to the prison fence. Additionally, the portion of easement proposed for closure is not used for commerce, recreation, transportation or traditional outdoor activity as described by AS 38.04.055 and AS 38.04.200, and a neighboring east-west aligned SLE and to-and-along easement reserved under AS 38.05.127 continue to provide access to all neighboring parcels and other State lands. Consideration of closure of the easement is therefore appropriate.

² Per Management Right ADL 232725, associated with OSL 843.

Agency Review:

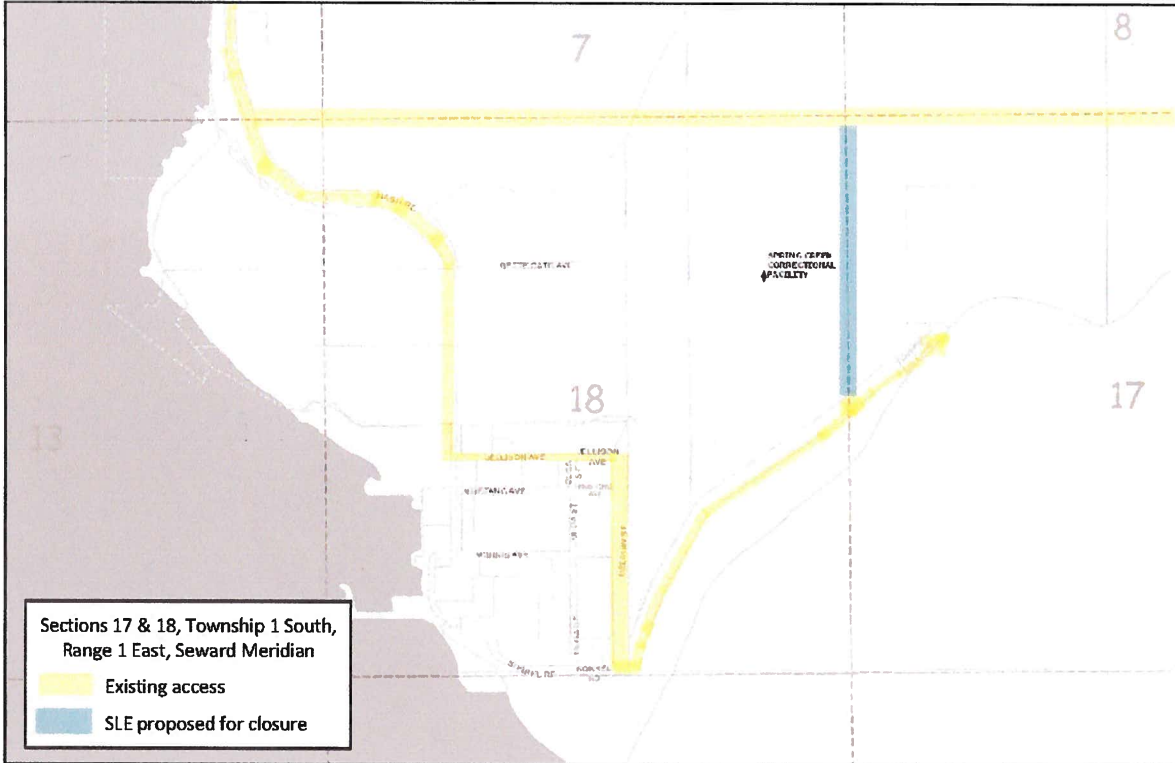
Agency review of the proposed action was initiated on March 29th, 2017 and concluded on April 28th, 2017. State agencies consulted included:

- City of Seward City Manager; Community Development
- Kenai Peninsula Borough (KPB) Road Department (RD); Planning Department; Land Management Department
- DNR DMLW Water Section; Mining Section; Survey Section; Land Sales and Contract Administration Section (LSCAS); Realty Services Section
- DNR Division of Parks and Outdoor Recreation, Directors Office; State Historical Preservation Office
- DNR Division of Oil and Gas, Permitting Section; State Pipeline Coordinator's Section (SPCS)
- DNR Division of Forestry, Kenai/Kodiak Office
- DNR Mental Health Trust Office (MHTLO)
- Department of Transportation and Public Facilities, Statewide Right-of-Way; Southcentral Office (DOTPF)
- Department of Fish and Game, Division of Wildlife Conservation; Division of Habitat
- Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs
- Department of Environmental Conservation, Division of Environmental Health; Division of Water (DW)
- United States Corps of Engineers, Alaska District
- United States Coast Guard, Alaska District
- United States Forest Service, Alaska Region
- Bureau of Land Management, Alaska Region, Anchorage Field Office

The following agencies responded with statements of no comment or non-objection: LSCAS, MHTLO, DOTPF, SPCS, KPB RD.

The Department of Environmental Conservation DW noted that the SLE may provide access to drinking water wells maintained by the City of Seward. Access by the City of Seward to the two wells in question is provided by easements A, D and J on SRD Plat 2016-8. Well protection easements for the wells in question are provided by easements I and J on same plat.

Figure 1. Existing access and SLE proposed for closure



Public Notice:

This preliminary decision is the initial determination on a proposed disposal of interest in State land and is subject to comments received during the public notice period. All comments received by the comment deadline will be addressed in the final finding and decision. Only those who comment and the applicant will have the right to appeal.

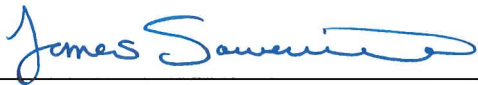
Pursuant to AS 38.05.945, this preliminary decision will be advertised for a 30-day public comment period, starting on August 9, 2018. In addition, the post offices located in Seward and Moose Pass will be requested to post the notice per AS 38.05.945(b)(3). The notice will also be posted on the State of Alaska Online Public Notice website located at <https://aws.state.ak.us/OnlinePublicNotices/default.aspx>.

Written comments may be submitted via three following methods. Questions can be directed to James Sowerwine at (907) 334-2542. To be eligible to appeal the Final Finding and Decision, a person must provide written comments during the preliminary decision comment period.

Postal:	Department of Natural Resources	Fax:	(907) 334-2542
	Division of Mining, Land and Water		
	Southcentral Regional Office	Email:	james.sowerwine@alaska.gov
	ATTN: James Sowerwine		
	550 West 7 th Avenue, Suite 900C		
	Anchorage, AK 99501-3577		

Proposal and Recommendation for Closure of Section Line Easement:

In consideration of all events and criteria described above, it is my determination that the proposed indefinite closure described herein is consistent with the State's management intent for this land and would be a benefit to the State of Alaska. Therefore, I recommend that the portion of SLE described in the Location and Interest / State Easement Interest section of this document be closed for an indefinite length of time that will be generally concurrent with the use of the property for the operation of the State's Spring Creek Correctional Center or other state facility. The closure considered herein has been narrowly tailored to retain access to the maximum extent practicable, including to all neighboring parcels and state owned lands not associated with the operation of the prison facility. If closed, the SLE may be subsequently reopened at such time that DNR finds that public safety concerns associated with co-location of the correctional center and SLE have been addressed. The Southcentral Regional Land Office assumes no responsibility for maintenance or liability for injury or damages attributable to this closure.



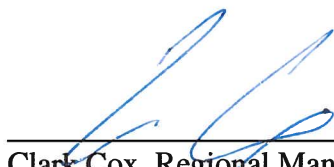
James Sowerwine, Natural Resource Manager
DNR Division of Mining, Land, and Water
Southcentral Region Office



Date

Preliminary Decision:

In considering the request for closure of an access easement under AS 38.04.058, AS 38.05.035 (a)(2), 11 AAC 51.100 (a), DNR seeks to ensure the protection of public safety and property while preserving access to the maximum extent practicable. In consideration of the information listed above, SCRO has determined that the closure to be implemented under ADL 232821 is consistent with these statutes. It is my decision that this closure is consistent with DNR's intent to make the State's land and resources available for maximum use consistent with the public interest. The easement is proposed to be closed until DNR determines that closure is no longer necessary to protect public safety. This application shall now proceed to public notice.



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



Date