

**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES**

Final Finding and Decision

ADL 233782

Alaska Electric and Energy Cooperative, Inc. d.b.a. Kenai Hydro, LLC
Public Access Easement
Grant Lake Hydroelectric Facility

This Final Finding and Decision complements and updates the Preliminary Decision (PD) dated April 7, 2022.

Changes to the Decision:

Grantee:

The PD noted that a public access easement would be granted to either the Division of Mining, Land and Water (DMLW) or the Kenai Peninsula Borough (KPB) to be held in trust for the public. A final public access easement will be issued to KPB following the completion of a DMLW-approved survey by the applicant and receipt of the deliverables outlined in the attached entry authorization.

Bridge Height:

The height of the proposed bridge across the Trail Creek Narrows was noted in the PD to be approximately 20 feet above Ordinary High Water (OHW). After review of detailed engineering designs, the Department of Natural Resources (DNR) consulted with the applicant's engineer who confirmed the height of the bridge to be approximately 15 feet above OHW. Because bridge plans have not been finalized, the DNR is considering a bridge height of 13 – 17 feet above OHW which is not expected to impact any existing uses of the waterbody. Usage is reported to consist of non-motorized personal watercraft including kayaks, rafts, and canoes by local residents and tour operators. Access to and along the Narrows is not anticipated to be impeded by the bridge, as the applicant's engineer reports that the proposed bridge abutments will allow for shoreline passage when water conditions permit. However, as this new information differs from what was previously noted in the PD, DNR has chosen to open the right to request reconsideration to all affected parties to ensure that the public has every opportunity to review the updated information.

Characterization of the Iditarod National Historic Trail:

As noted in the PD, the Commemorative Route of the Iditarod National Historic Trail (INHT) passes through the proposed leasehold, serialized as ADL 233857, associated with the easement request considered by this decision. Due to the number of comments received concerning the INHT and the complexity of the issue, DNR finds it necessary to clarify the various routes and underlying authorities for the INHT in the vicinity of the project. The following interests associated with the INHT are present in the vicinity of the project area:

- Patent Reservation for the Primary Route of the INHT: The Bureau of Land Management (BLM) holds a 1000-foot-wide patent reservation for the historic route of the INHT. The Primary Route of the INHT is co-located with the right-of-way for the Alaska Railroad in this location and is unaffected by the proposed easement or leasehold. There are no INHT Connecting Trails, as described by the patent reservation, within the vicinity of the project area.
- Kenai Area Plan INHT Corridor: The Kenai Area Plan (KAP) outlines a 1000-foot-wide trail corridor along the route of the Commemorative Iditarod Trail. This route intersects the proposed leasehold to the east of the powerhouse and connects the INHT at Vagt Lake to the Grant Creek Crossing. This INHT corridor is affected by the proposed KAP Plan Amendment, serialized as SC-99-002A16, which proposes to reduce the corridor to a minimum of 100-feet.
- Public Access Easement held by the U.S. Forest Service (USFS), ADL 228890: The USFS holds a Temporary Easement Authorization (TEA) from DNR for a 100-foot-wide public access easement, contained within a 1000-foot trail corridor managed by DNR. This route is coincident with the 1000-foot corridor outlined by the KAP and is co-located with the trail constructed to the east of the proposed powerhouse.

Proposed Action:

Alaska Energy and Electric Cooperative, Inc. (AEEC) d.b.a. Kenai Hydro, LLC (KHL; the applicant) proposes to construct a 110-foot single lane bridge spanning the Trail Creek Narrows, a 24-foot-wide access road, an aerial transmission line, and communication and control cables, within a project footprint approximately 2,400 feet long, 100 feet wide and approximately 5.5 acres in size in support of the proposed Grant Lake Hydroelectric Project. DNR will issue an Entry Authorization (EA) for construction, survey, operation, and maintenance of the improvements to KHL. Once the terms of the EA are met, an indefinite public access easement will be granted to the KPBL. The easement as proposed is intended to provide access to and adjoin with a proposed leasehold serialized as ADL 233857, which proposes two discrete leasehold parcels of irregular shape with an approximate total area of 47 acres. The following deliverables will be required prior to issuance of the EA:

- Performance Guaranty Bond of \$7,500.00
- Proof of Liability Insurance
- First Year of EA annual fee of \$720.00

Access to the proposed project area will require access across KPB managed lands, a crossing of the Alaska Railroad Corporation (ARRC) right-of-way, and a connection to the Department of Transportation & Public Facilities (DOT&PF) managed right-of-way associated with the Seward Highway. These additional authorizations are outlined as deliverables in the EA and are the responsibility of KHL to obtain prior to construction of the proposed infrastructure.

Dependent Action:

The following actions must occur prior to issuance of any authorizations described in the Proposed Action section above:

- Kenai Area Plan Amendment, SC-99-002A16
- A change to 11 AAC 96.014(b)(15) removing these lands from the “Kenai River Special Management Area Proposed Additions” special use area.

SC-99-002A16 is being processed separately from, but concurrently with, this proposed action. Any changes to 11 AAC 96.014(b)(15) would be proposed and processed after the completion of the plan amendment process.

Public Notice of the Preliminary Decision:

The PD was advertised for a 30-day public comment period, beginning on April 8, 2022. Notice was posted at the post offices located in Moose Pass, Seward, Kenai, Soldotna, and Cooper Landing, and on the State’s Online Public Notice website. Notices were also mailed or e-mailed to neighboring property owners, permit and lease holders, and other interested parties on April 8, 2022. Distribution of the PD was also sent to agency contacts to account for changes to the applicant’s development plan following the initial agency review, and agency responses are included below.

Agency Review Comment and Response:

A total of 5 agency comments were received during the notice period and are summarized below:

Comment: On April 11, 2022, The KPB Kenai River Center commented to note that the KPB regulates a 50-foot setback from both Trail Lakes and Grant Creek, and that all work to be done within the setback will require a permit, including vegetation removal, utility infrastructure, and the bridge.

Response: DNR appreciates the comment and has passed the information to the applicant.

Comment: On May 3, 2022, the Alaska Energy Authority commented to express support for the project noting that the development would generate low-cost renewable power and reduce dependence on natural gas.

Response: DNR appreciates the comment.

Comment: On May 6, 2022, DMLW Realty Services Section (RSS) commented to recommend that new title reports be requested for ADL 233782 and ADL 233857 due to a change in project boundaries.

Response: DNR appreciates the comment.

Comment: On May 9, 2022, the BLM INHT Administrator commented to note that the Bureau is the federal administrator for the INHT and has an interest in the Grant Lake Hydro Project and associated land management decisions which may impact the trail. BLM further noted that a primary concern is that the proposed 50-foot buffer either side of centerline of the INHT which allows for placement of roads, penstock, electric and communication cables, and other associated infrastructure adjacent to the INHT will be insufficient to prevent significant adverse effects on the trail experience and associated values. Any easement provided for the INHT should be provided exclusively for the trail and a mature screening vegetated buffer, and not allow for built facilities for non-trail purposes. BLM recommends that the width of the INHT easement in Unit 3800 correspond to the 200-foot buffer either side of centerline established as a minimum width in the Kenai Area Plan but notes that the buffer would ideally be established at the full 1000 feet in order to maintain the trail experience and associated values.

Response: DNR appreciates the comment. A TEA was granted to the USFS on April 18, 2006, for the INHT in this location. The TEA was granted as a 100-foot-wide easement to the USFS centered within a 1000-foot trail corridor managed by DMLW and is not subject to adjustment by this decision. The reduction of the trail corridor to 50 feet either side of centerline within Unit 3800 is a planning action proposed by DMLW Resource Assessment and Development Section and is outside the scope of this decision to authorize issuance of a public access easement associated with the Grant Lake Hydro Project.

Comment: On May 9, 2022, the U.S. Fish & Wildlife Service (USFWS) commented to note that the PD for the proposed easement contains considerations for fish and wildlife per the KAP, agency comments received during the notice period, and discussion of mitigation measures outlined in the Grant Lake Hydro development plan. In addition, the USFWS recommended the following measures to increase conservation outcomes:

Migratory Birds: To minimize project effects on migratory birds, we recommend avoiding land disturbance and vegetation clearing during peak bird breeding season. The nesting season is April 15- July 15 for forested areas, and May 1 – July 15 for non-forested areas (i.e. muskegs, ponds).

Eagles: Visual and noise disturbance caused by vegetation clearing and construction activities could impact nesting eagles from March 1 to August 31. We recommend

conducting eagle nest surveys before leaf-out using a biologist experienced with raptor surveys to confirm the absence of eagle nests near the project area. If an eagle nest is detected, we recommend completing work outside the eagle nesting season. If it is not possible to complete work outside the nesting season, then an incidental take permit may be needed, and we recommend reaching out to the Service for further coordination.

Wetlands: Impacts to wetlands can have negative effects to fish and wildlife habitat. Replacement of wetlands with impervious surfaces negatively affects water quality and the natural hydrograph. Wetlands should be avoided where possible. Consider the following best management practices to minimize the impacts to wetlands:

To the maximum extent practicable, reduce the project footprint in wetlands and conduct activities in already disturbed areas or lower functioning/quality habitat. Avoid using or degrading high-value habitat areas (e.g., open water and emergent wetlands). Isolate wetlands from construction-generated sediment and pollutants (i.e., soil sediments, fuels, grease, and oil) with properly installed silt fencing to avoid and minimize water quality degradation to protect respiratory gill function of fish. Stabilize disturbed areas in the construction site and install silt curtains or other measures to direct storm water away from fish-bearing water bodies to prevent sedimentation and water turbidity to maintain water quality of fish habitat. Use erosion control measures that have minimal additional habitat impacts (e.g., weed free gravel, weed free erosion control materials, and erosion control materials without plastic mesh netting) on project sites.

Response: DNR appreciates the comment and has provided KHL with a copy of the USFWS recommendations. KHL's Avian Protection Plan (APP) notes that the applicant intends to limit impacts to avian species by avoiding disturbance during the breeding season, designing the aerial transmission lines according to current avian protection standards, and establishing vegetation removal timelines. Per KHL, if disturbances must occur during the breeding season noted by USFWS, nest surveys would be conducted by a qualified habitat biologist who would remain onsite during all vegetation removal, which would be suspended in the event that any construction activities were identified to result in impacts to active nests or bird species.

The applicant's Final Environmental Impact Statement (FEIS) noted that KHL's "proposed erosion and sediment control, spill prevention, control and containment, hazardous materials, and fuel storage plans are intended to limit adverse effects on environmental resources" and noted the expectation that these plans would adequately protect water quality and aquatic habitat in Grant Creek from sedimentation or petroleum products. Specifically, the applicant proposes stabilized construction exits to clean mud and sediment from vehicle tires, silt fencing to trap sediment in work areas upslope of Grant Creek and Grant Lake, and site delineation to specify areas which will be left undisturbed including

trees, wetlands, pond habitats, and buffers as described in the applicant's Erosion and Sediment Control Plan pursuant to the Federal Energy Regulatory Commission (FERC) License No. 13212. Additionally, the applicant has been directed to consult with the U.S. Army Corps of Engineers for any activities which may impact wetlands in the project vicinity.

Public Notice Comment and Response:

A total of 14 comments were received during the public notice period. Many of the comments received contained overlapping topics of interest, therefore concerns noted by commenters have been sorted by topic and summarized below. Individual comments are housed within the casefile associated with ADL 233782.

Easement Grant Type:

Issue: Will grant of a public access easement to KPB or DMLW allow AEEC to construct, operate, and maintain the transmission line, control cables, and road infrastructure?

Response: Prior to issuance of a public access easement to the KPB, an entry authorization will be granted to KHL to allow for construction, survey, operation and maintenance of the proposed infrastructure. The final easement to KPB will stipulate that KHL, or any successor in interest, has the ability to maintain the road, bridge, and transmission lines in coordination with KPB for the life of the project.

Issue: Will grant of a public access easement to KPB require AEEC to seek additional land use authorizations from KPB for the same project area?

Response: Additional land use authorizations will not be required for construction, maintenance, and operation of the proposed infrastructure within the easement. Construction of additional infrastructure not identified in the current development plan, or changes to the scope of use of the easement will require an amendment or additional authorization by SCRO. The final public access easement will stipulate that additional authorization are not required for maintenance and operation of infrastructure outlined in the current development plan.

Project Applicant:

Issue: The local power company is not the applicant for this project and the project would only benefit Homer customers.

Response: Development of the proposed hydroelectric facility will increase the power generation capacity of the entire Railbelt electrical grid and diversify energy sources. It is outside of DNR's authority and the scope of this decision to determine which utility company chooses to develop sources of renewable energy.

Issue: The Homer Electric Association Inc. (HEA), should instead invest the money into the Dixon Diversion project to increase the energy produced by the existing Bradley Lake Hydro Project.

Response: It is outside DNR's authority and the scope of this decision to recommend that the applicant redirect funding to alternate projects.

Economic Benefit:

Issue: The "Economic Benefit and Development of State Resources" section of the PD did not discuss the economic benefit of the INHT, fishing opportunities in Grant Creek, or the use of float planes on Lower Trail Lake. Please explain why these uses are not considered a benefit and why a project which would negatively impact one or more of them is considered to be the greatest economic benefit to the state.

Response: The scope of the PD is to evaluate whether the proposed development will provide the greatest economic benefit and evaluate whether there are any competing requests for authorization within the proposed easement footprint. While there is a clear local economic benefit to the activities noted, the proposed development of a roadway, bridge, and transmission lines to support a hydroelectric facility is not expected to negatively impact existing use patterns in the area. Lower Trail Lake extends approximately 1.5 miles south from the proposed bridge crossing, and floatplane use of the lake is not expected to be impacted by the development. Public access along the INHT will not be affected by the proposed easement or associated facilities within the leasehold, and the INHT is not proposed to be rerouted, obstructed, or otherwise diverted. Development of the roadway and bridge will create an additional access point to the INHT, therefore facilitating the development of additional public recreation opportunities in the area. Per the FEIS, 12 anglers were observed fishing in Grant Creek on an annual basis. Development of the project would restrict public use of approximately 100 feet of the southern shoreline of the creek in the vicinity of the powerhouse, leaving the remaining 0.5 miles of Grant Creek unaffected. DNR does not anticipate that issuance of a public access easement will have significant impacts to currently available fishing opportunities in Grant Creek.

Issue: The Project will add 18,600 MWh per year to HEA's renewable energy generation portfolio and will reduce our dependence on natural gas. The Grant Lake Hydroelectric Project will help the HEA Board of Directors meet its renewable energy goals and will assist in meeting the state of Alaska's renewable energy goal to produce 50 percent of Alaska's energy from renewable resources by 2025. Additionally, the Project will assist HEA in its strategic pursuit of reducing its dependence on natural gas.

Response: DNR acknowledges the comment.

Issue: This Project will provide benefits for Alaskans for generations to come. Hydroelectric power provides a dispatchable renewable energy resource, the ability to follow intermittent renewables, spinning reserve, energy storage, voltage support and system resiliency. While generally capital intensive to build, hydro power inevitably ends up being most utilities low cost of power. The Grant Lake Hydroelectric project will help Homer Electric Association's Board of Directors to meet its renewable energy goals and will assist in meeting the state of Alaska's renewable energy goal to produce 50 percent of Alaska's energy from renewable resources by 2025. Additionally, the Project will mitigate Southcentral Alaska's dependence on natural gas.

Response: DNR acknowledges the comment.

Issue: The Railbelt electrical grid urgently needs more renewable energy generation. Most of the grid's energy comes from Cook Inlet natural gas, which is only available from a single supplier, and has increased in price dramatically in recent decades. While Grant Lake is being developed by Homer Electric, there will be benefits to the entire Railbelt electrical grid. While the Grant Lake project is small, it provides unique benefits to our power grid. Hydropower has a different season of availability than solar or wind, and the storage capacity of the lake allows some ability to schedule power production. Extensive environmental review through the long EIS and FERC process shows that the project has minimal impact on local ecologic resources. In fact, there are some potential benefits. Grant Lake Hydro is designed with multiple different intake levels to allow for a coordination of outflow water temperature with the temperature regime in Grant Creek. In addition to protecting downstream fish populations from potential effects of the project, this can also be used to protect downstream fish populations from climate-change induced high temperature events in the creek.

Response: DNR acknowledges the comment.

Issue: Alaska's Railbelt power grid is mostly dependent on natural gas from Cook Inlet to supply electricity, and this resource is dwindling. The only viable and affordable alternative to natural gas power in the near term is hydropower, combined with variable renewables like wind and solar. Grant Lake would be both a valuable new generation asset and is being designed to provide some capacity to store water so that it can be used to balance variation in supply and demand elsewhere on the grid. It is an important part of providing affordable and reliable power in the future. It is also important to consider local ecological impacts, and I would strongly encourage the developers of the project to think creatively about how they can minimize these impacts, and potentially find some benefits. My understanding is that they are already designing the project so that it can be used for thermal regulation in downstream waters, which could be very valuable to sustain fish habitat during a heat or drought crisis.

Response: DNR acknowledges the comment.

Wildlife & Avian Species:

Issue: Development as proposed will endanger bald eagles in the area.

Response: The USFWS provided input regarding bald eagles in the FEIS which was later incorporated into KHL's APP. The APP includes a variety of mitigation measures to reduce impacts to nearby avian species by avoiding construction during the breeding season when possible, surveying existing nests in the area prior to construction, and designing the proposed transmission lines according to current avian protection standards.

Issue: The project area provides a haven for swans and ducks which overwinter near the Trail Lake Narrows.

Response: The presence of overwintering ducks and swans in the vicinity of the Trail Creek Narrows was addressed in the FEIS. Specifically, the FEIS found that *"under proposed project operations, winter flows in Grant Creek would be higher than current conditions and would maintain or potentially expand open water areas in the Trail Creek Narrows"*. Therefore, development of the project is not expected to adversely impact open water habitat preferred by ducks and swans in the winter.

Aquatic Habitat & Erosion:

Issue: Grant Creek is a spawning area for many fish species. Reduction of stream flow in Grant Creek is detrimental to aquatic species and may impact spawning habitat for salmon.

Response: Reduction in stream flow and the potential impact to fish species in Grant Creek was evaluated during the FEIS process. The applicant's FEIS noted that KHL's *"proposed erosion and sediment control, spill prevention, control and containment, hazardous materials, and fuel storage plans are intended to limit adverse effects on environmental resources"* and noted the expectation that these plans would adequately protect water quality and aquatic habitat in Grant Creek from sedimentation or petroleum products. Additionally, the FEIS found that KHL's *"proposed instream flows, ramping rates, channel maintenance flows, and water temperature regime would adequately mitigate project impacts on resident and anadromous salmonids in Grant Creek"*. The FEIS further notes that the proposed project would have little to no effect on flows in lower Grant Creek during the spawning period for Chinook, Coho, Pink, and Sockeye Salmon, and Dolly Varden. Finally, KHL will be required to obtain a Fish Habitat Permit from ADF&G for portions of the development which have the potential to impact fish species.

Recreational Access:

Issue: Development as proposed will negatively impact public recreation in the area. The project area lies within a recreation corridor which is used for skiing, fat tire biking, snowmachining, kayaking, hiking, and fishing.

Response: Issuance of a public access easement to facilitate road development does not preclude the public's ability to recreate in the vicinity of the project outside of the proposed leasehold, which is outside the scope of this easement decision.

Issue: A trail should be built over the pipeline to facilitate public access to Grant Lake.

Response: Public access along the proposed pipeline route is outside the footprint of the proposed easement, and access through the leasehold is outside the scope of this decision.

Issue: If development is allowed, off-road vehicles will use the road to access new areas to recreate, disturbing the wildlife and terrain.

Response: Use of off-road vehicles with a curb weight up to 1,500 lbs. is currently allowable on these DNR-managed lands in the vicinity of the project area pursuant to 11 AAC 96.020. While construction of a bridge across the Trail Creek Narrows may facilitate additional motorized traffic to the area, off-road vehicle use outside of the road easement is only allowable if such use "does not cause or contribute to water quality degradation, alteration of drainage systems, significant rutting, ground disturbance, or thermal erosion", per 11 AAC 96.020.

Issue: Aerial transmission lines are proposed to cross the Trail Lake Narrows. Lower Trail Lake is used by float planes. Can float planes still be operated safely with the proposed transmission lines?

Response: Copies of the PD were provided to the Federal Aviation Administration (FAA) during the public notice period. DNR has not received any input to suggest that the proposed transmission lines will change existing use patterns associated with float planes on Lower Trail Lake. The applicant has been notified they should coordinate with the FAA regarding the transmission line and any conditions or markings required.

Impacts to Viewshed & Noise Potential:

Issue: Potential for Noise Pollution.

Response: As noted by KHL's FEIS, noise associated with operation of the proposed project will largely be restricted to the 18-month construction period. The EIS notes that the powerhouse is proposed to be insulated which would limit the extent of the noise in the immediate vicinity, and further notes that the existing forest cover and topography will absorb additional noise from operation of the powerhouse

Issue: Development of the access road and transmission line will traverse the boundaries of a privately owned parcel, USS 3300, and will have visual impacts to previously secluded land.

Response: Copies of the PD were provided to the owners of the parcel in question (KPB Parcel ID 12517003). A comment in opposition to the proposed lease associated with this development was received from an individual thought to be the owner of USS 3300. Documentation of the comment and DNR's response can be found in the Final Finding and Decision for ADL 233857.

Issue: The Seward Highway MP 0 to 38 is designated as an All-American Road, U.S. Forest Service (USFS) Scenic Byway, and Alaska Scenic Byway. These designations recognize the scenic, natural, historical, and recreational values of the land on either side of the highway, which will be impacted by the proposed development.

Response: While the highway designations noted may recognize scenic, natural, historic, and cultural values in the vicinity of the Seward Highway in Moose Pass, they do not prohibit the development of a nearby hydroelectric facility.

Issue: The proposed transmission line, access road, and related development will be viewable from the air and will have a negative impact on the viewshed of an important tourism destination.

Response: Development of an access road and transmission line as proposed, is not prohibited by the KAP and the components of the project viewable from the highway are similar in nature to existing infrastructure in the area. Crown Point Road to the south of the project area is currently visible from the air, and the proposed transmission lines are intended to tie into existing lines which parallel the Seward Highway. While portions of the proposed infrastructure may be visible from the air, KHL has identified vegetative screening, visual barriers, neutral-colored paints, and other mitigation measures in the Scenery Management Plan required by the FEIS in order to minimize visual impacts of the project.

Impacts to the INHT:

Issue: The new INHT corridor of 100 feet will include a road, penstock, and transmission line. This is contrary to the characterization of a no-development corridor and will not enhance the recreational and historical experience of the INHT, provide a trail buffer, or protect the trail.

Response: The reduction of the INHT corridor from 1000 feet to 100 feet is a planning action by the Resource Assessment and Development Section of DNR and is outside the scope of this decision regarding the proposed easement. This decision pertains to the proposed issuance of an easement for the transmission line, bridge, and roadway.

Issue: The USFS agreeing to changes to the easement held for the INHT does not negate the fact that BLM holds a patent reservation for the trail.

Response: There are no changes to the existing USFS easement currently proposed. The USFS holds a 100-foot public access easement for the Commemorative INHT, serialized as ADL 228890, which lies within a 1000-foot trail corridor managed by DMLW. BLM holds a patent reservation for the Primary Route of the INHT which is centered on the existing route of the railroad in this location.

Issue: Page 8 of the PD notes that BLM has no interest in the project area. Was the BLM INHT Administrator consulted on this interpretation?

Response: The BLM INHT Administrator was sent the PD and provided updated comments as noted in on page 4 of this decision.

Issue: The INHT Alliance does not concur that the commemorative alignment established under the National Trail Act is not a segment of the INHT.

Response: DNR acknowledges the comment. The DNR Realty Services Section examined the issue and found no evidence that the Commemorative Route of the INHT was reserved in patent when the underlying lands were conveyed to DNR. Furthermore, there is no mention or depiction of a Commemorative Route in the 1986 INHT Comprehensive Management Plan. Finally, the FEIS notes that the Commemorative INHT is neither listed on, or eligible for, the National Register of Historic Places.

Issue: Is DNR proposing that the public should hike along the active railroad tracks in the vicinity of the project?

Response: DNR does not endorse trespass within ARRC right-of-way.

Issue: If the Diagnostic Team (DT) study required for the railroad crossing and connection to the Seward Highway has not started, then why has there been a proposed area plan amendment and decision regarding the proposed easement?

Response: DNR cannot control the timelines of other agency authorizations and studies. The requirement to complete the DT Study prior to construction of the proposed development was stipulated by the PD to address this issue. The applicant has been made aware of the requirements associated with the DT study.

Issue: DNR has not addressed the comments from DOT&PF and ARRC regarding the DT study and report.

Response: DOT&PF and ARRC's comments outline various processes and authorizations which will be required prior to construction of the railroad crossing and highway connection, including the DT study. It is the responsibility of the applicant to seek the appropriate authorizations and initiate the DT study with the ARRC Chief Engineer. Timelines related to applicant coordination with other state agencies is not within DNR's control, however, the requirement to complete the DT Study prior to construction of the proposed development was stipulated by the PD to address this issue.

Issue: A crossing may not be authorized or may be authorized in a different location than currently proposed. What happens if the location is denied or approved in a different location?

Response: DNR recognizes that the findings of the DT study may necessitate changes to the applicant's development plan. For this reason, construction of the proposed infrastructure may not occur until the DT study has been completed and a final report is signed by all parties. In the event that the crossing location is not authorized as currently proposed, DNR will review any subsequent updates to the applicant's development plan.

Issue: DOT&PF's comments indicate that gates are not allowed within the highway right-of-way. Given existing patterns of illegal dumping and trespass along the INHT north of Seward, public use of the road may have adverse effects on the INHT. How will DNR ensure that these issues do not occur on state lands along the proposed public road leading to the INHT?

Response: Without statewide enforcement authorities, DNR has very little ability to prevent individuals from engaging in illegal behavior beyond coordination with law enforcement. Illegal dumping and trespass should be reported to the appropriate law enforcement authority. DNR does use limited financial and human resources to address illegal dumping to the greatest extent possible.

Due to several of the issues raised during the PN and as summarized above, several commenters have requested the denial of authorizations being requested to DNR and/or have voiced their opposition to the proposed project. This decision considers all public and agency comments received. Analysis of those comments along with KHL's submitted project materials, either address the concerns presented, are outside the scope of this decision, and/or are noted.

Signature page follows:


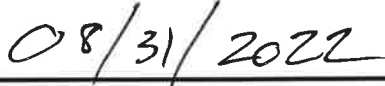
Recommendation:

DNR has completed a review of the information provided by the applicant, examined the relevant land management documents, and has found that this project is consistent with all applicable statutes and regulations. This decision considered all submitted public and agency comments. The issuance of this easement serves the best interest of the State as it provides a direct and indirect economic benefit to the State and encourages the development of the State’s resources. Collection of fees represents the direct economic benefit realized by the State. The authorization of this easement is in the State’s best interest as it provides for continued recreational opportunities for the public. It is therefore recommended that DMLW issue KPB, subject to completion of the EA requirements by KHL, an indefinite public access easement under the authority of AS 38.05.850 as shown in the following attachments:

- Attachment A – Entry Authorization
- Attachment B – Sample Easement
- Attachment C – Development Plan

Final Finding and Decision:

The findings of the Preliminary Decision have been reviewed and considered. The case file has been found to be complete and the requirements of all applicable statutes have been satisfied. I find that it is in the best interest of the State to proceed with this easement as described above, under the authority of AS 38.05.850. KHL will be required to submit proof of insurance, land use fees totaling \$720.00 annually, a performance guaranty of \$7,500.00, and a request for survey instructions and associated survey fees. If the applicant does not submit all of the required deliverables within one year from the date of this decision, DNR may choose to rescind this decision. In addition to deliverables required prior to issuance of the EA, the applicant must obtain an approach road permit from DOT&PF, a Utility Permit from ARRC and DOT&PF, land use authorizations from the KPB, a right of way permit from ARRC, and a Diagnostic Team Report signed by all three parties prior to construction activities in excess of 11 AAC 96.020. This decision goes into effect and becomes a final administrative order and decision of the department on the 31st calendar day after issuance.

Vasilius Gialopsos, Acting Commissioner Date
Department of Natural Resources

Appeal:

An eligible person affected by this decision may request reconsideration to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any request for reconsideration must be received by the Commissioner’s Office within twenty (20) calendar days after issuance of the

decision under 11 AAC 02.040. The Commissioner may order or deny a request for reconsideration within thirty (30) calendar days after issuance of the decision. If the Commissioner takes no action on a request for reconsideration within thirty (30) days after issuance of the decision, the request for reconsideration is considered denied. The Commissioner's decision on reconsideration, other than a remand decision, is a final administrative order and decision of the department. An eligible person must first request reconsideration to the Commissioner before seeking relief in superior court. The Alaska State Courts establish its own rules for timely appealing final administrative orders and decisions of the department.

Reconsideration may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. Reconsideration must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$200.00 under the provisions of 11 AAC 05.160(a)-(b). A .pdf or print copy of 11 AAC 02 may be obtained by contacting Erik Fossum via phone at (907)-269-8429, via email at erik.fossum@alaska.gov, and is also available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.

