

**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
SURVEY SECTION**

PRELIMINARY DECISION

Petitioner: Donlin Gold, LLC on behalf of
Current landowners: Calista Corporation,
The Kuskokwim Corporation & the Lyman Revocable Living Trust

R.S. 2477 Easement Vacations
EV 3-244

This Preliminary Decision (PD) is the initial determination on a proposed petitioned action regarding interests in State land and is subject to comments received during the public notice period. The public is invited to comment on this PD. The deadline for commenting is June 29, 2022. Please see the PUBLIC NOTICE OF THE PRELIMINARY DECISION section of this decision for details on how and where to send comments for consideration. Only the petitioners and those who comment during the comment period have the right to appeal the Final Finding and Decision (FFD).

PETITIONED ACTION:

The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Survey Section has received a petition from Donlin Gold LLC (Donlin) filed on behalf of the underlying private landowners – consistent with Donlin’s lease agreements with those private landowners – to vacate easements on their lands (petition). The petition proposes to permanently vacate all, or segments of several Revised Statute 2477 Easements (R.S. 2477s) that cross private property to facilitate the development of the Donlin Gold Mine (Mine). The R.S. 2477s proposed for vacation are serialized by the Department as Revised Statute Trail (RST) 545, RST 546, RST 547, RST 548, RST 549, RST 550, and RST 1475, as shown in Exhibits 1A-1D.

The R.S. 2477 easements and segments proposed to be vacated through this PD, are located approximately 10 miles north of the Village of Crooked Creek, Alaska within Township 22 North, Range 50 West; Township 22 North, Range 49 West; Township 22 North, Range 48 West; Township 23 North, Range, 49 West, and Township 23 North, Range 48 West, Seward Meridian, Alaska. For a breakdown of these areas by section, see Table 1, Table 2, and Table 3 of this decision document.

As stated in Donlin’s Public Easement Plan, dated January 2022 (Exhibit 2), easement vacations are proposed “to protect public safety during the operation of the Donlin Gold Mine because the mining area will be an active industrial site. The inherent hazards of an active mine property may not always be apparent to the public engaged in hunting, exploring, hiking, or simply traveling by

all-terrain vehicle. Based on Donlin Gold's experience at the site, the amount of current public access and use is low, however access control measures need to be in place to protect the public and mine workers. Donlin Gold has established a Core Operating Area (COA) to identify the area where public access would be excluded to protect the public from potential hazards associated with operations at the mine during mine development, operations, and post mining reclamation activities."

Mining activities on private lands will likely alter the landscape and therefore the interconnectivity outside and inside the Core Operating Area (COA) of the underlying RST routes proposed for vacation. RST 547, RST 549, and RST 550 are expected to be fully obliterated. RST 545, RST 456, RST 548, and RST 1475 are expected to be impacted by mining activity.

Under the petition, the underlying landowners will grant Donated Easements (DE) to replace the R.S. 2477s to form an integrated public access system within and adjacent to the COA, as shown in Exhibits 1A-D. The proposed DEs will interconnect with the remaining R.S. 2477s outside the COA as well as FAS 231, utilizing the after-mining terrain more effectively and balancing both legal public access and land use by private landowners. The proposed vacations will minimize public safety concerns during mining and is anticipated to provide for and facilitate improved practical public access once the lands have been reclaimed. Furthermore, proposed DEs will secure definitive legal public access across private lands while removing any question to the validity of the public access.

BACKGROUND

Donlin proposes to develop an open pit, hard rock gold mine 277 miles west of Anchorage, 145 miles northeast of Bethel, and 10 miles north of the village of Crooked Creek. The Mine and most of the related infrastructure will be located on private lands owned by the Calista Corporation (CC), The Kuskokwim Corporation (TKC), and the Lyman Revocable Living Trust.¹

Donlin has applied for various land use authorizations for associated mine infrastructure on adjacent State lands, including a port on the Kuskokwim River, an airstrip, access roads, material sites, a fiber optic line, and a natural gas pipeline from the Mine site to the Western shores of Cook Inlet. This decision does not incorporate, address, or amend any of those state land use authorizations. Those land use authorizations are irrelevant in this agency's evaluation of whether to vacate R.S. 2477s that are located on private land and that are frustrating the private landowners' use of that land. Donlin's associated infrastructure land use authorizations have been mentioned here for completeness only.

¹ When this decision states "Donlin proposes," or "Donlin requests" or other similar phrases, it should be interpreted as recognizing the petition has been filed by Donlin as the lessee on behalf of Calista Corporation, The Kuskokwim Corporation, and the Lyman Revocable Living Trust. Rather than DMLW receiving separate petitions from those three private landowners, Donlin has submitted a unified petition.

Donlin has separately applied to the DMLW Southcentral Regional Land Office (SCRO) to temporarily close the public's legal access rights in the COA, creation of additional access, and an easement realignment to facilitate industrial mining activities. This PD and the SCRO PD for ADL 236624/ ADL 234025/ ADL 234035 are running concurrent public processes and combined they address – in total – public access during and after mine life.

The overarching proposed project includes:

Easement Creation and Donated Easement 1

The public's safe access to public lands during the Mine's development, operations, and reclamation (Mine Life) is required. Therefore, Donlin has requested that SCRO create a public access easement, serialized as ADL 236624, over State-owned, DMLW-managed land that would provide for a segment of an alternative route around the COA during Mine Life (Exhibit 1C and 1D). The new alternate route will be referred to as the Alternative Public Access Route (APAR), which will require the proposed realignment of RST 76 and a proposed DE across private lands, which is referred to as DE 1. APAR is comprised of three easement segments, DE 1, proposed public access easement ADL 236624, and the portion of RST 76 to include the realigned segment. See the SCRO PD for ADL 236624/ ADL 234025/ ADL 234035 for full details.

Easement Vacation and Donated Easements 2-6

Donlin has petitioned the DMLW Survey Section to vacate applicable R.S. 2477 easements, or portions thereof, on private lands within and near the COA (Exhibit 1C). The proposed easement vacations are discussed herein.

The vacation of COA public access easements requires equal or better alternative replacements be granted before R.S. 2477 easement vacations may occur. Therefore, new public access easements across private lands – in the form of DEs 2-6 to replace the existing portions of the R.S. 2477 easements in the COA – are proposed to be donated to DMLW prior to Mine Life.

Easement Realignment

Donlin requests the realignment of a segment of RST 76, which is located on the east side of the COA and provides public access to public lands. A segment of RST 76 runs alongside of, and into, the COA boundary. Therefore, the SCRO PD proposes to realign RST 76 to just outside the COA onto State-owned, DMLW-managed lands, to facilitate the Mine operations. See Exhibit 1B and the SCRO PD for ADL 236624/ ADL 234025/ ADL 234035.

Easement Closure and Post-Mine Life Easement Opening

Donlin has requested that during Mine Life, DEs 2-6 and a segment of a Federal Aid System (FAS) route serialized as FAS 231, be temporarily closed within the COA, to facilitate mining operations. This action is considered in the SCRO PD for ADL 236624/ ADL 234025/ ADL 234035. The closure of easements within the COA is required to ensure the public's safety and prevent public access to an industrial mine site. The APAR will provide a route around the mine during and after mine life and is required to close the applicable easements in the COA.

If approved, Donlin will be required to enter into an agreement to ensure APAR is suitably maintained to provide access around the COA while the easements within the COA are closed. After Mine reclamation, DEs 2-6 will be opened to public use in accordance with the SCRO preliminary decision. *See* the ADL 236624/ ADL 234025/ ADL 234035 PD for details regarding requirements to re-open DEs 2-6 post Mine Life.

Associated Agreements

If approved, obligations will be further outlined in a separate agreement with provisions designed to protect public safety and provide information regarding public access routes during mining activities. Such an agreement will bind all applicable parties through enforceable provisions. This agreement will ensure DE routes are improved and located on the ground in a manner that provides for safe public access across the COA, post-mine reclamation.

During Mine Life, Donlin will be required to improve and maintain the APAR, and to manage public access during the closure of the COA. Donlin will be required to maintain the route for public use and manage public safety where the easement crosses private roads, nears material sites, or other industrial activities, as well as block access to the COA and notify the public of the alternative access provided by APAR. Once the Mine has been reclaimed and upon written agreement from SCRO, Donlin will be released from APAR management obligations. *See* the ADL 236624/ ADL 234025/ ADL 234035 SCRO PD for details regarding APAR and requirements to re-open DEs 2-6 post Mine Life.

LEGAL AUTHORITY:

Alaska Statutes: AS 19.30.400, AS 19.30.410, AS 29.03.030, AS 38.05.035, AS 38.05.860, AS 38.05.945, AS 40.15.070, and AS 40.15.300.

Alaska Administrative Code (AAC): 11 AAC 51.065, 11 AAC 51.100, and 11 AAC 53.600-730.

Under AS 29.03.030 and AS 40.15.070, the DMLW Survey Section is the platting authority within the Unorganized Borough (UB).

Under AS 19.30.400-410, the Department of Transportation & Public Facilities (DOT&PF) and the DNR have concurrent authority for approving the vacation of R.S. 2477 easements.

As noted below, this vacation must comply with AS 19.30.400-410 and 11 AAC 51.065.

ADMINISTRATIVE RECORD:

The administrative record for the proposed action consists of applicable statutes and regulations referenced herein, the 1988 Kuskokwim Area Plan (KAP) and the Amendment and Land Classification Order No. SC-88-001A21, other classification references described herein, and the casefile serialized by DNR as EV 3-244.

BOROUGH:

This action is located within the Unorganized Borough (UB) of Alaska; therefore, DNR is the platting authority.

UNDERLYING LANDOWNERS:

The Kuskokwim Corporation (TKC), the Calista Corporation (CC), and the Lyman Revocable Living Trust are the current landowners of record of the property affected by the R.S. 2477 easements proposed for vacation. Donlin Gold LLC has entered into a lease with the respective landowners for the property discussed in this PD. As the leaseholder, Donlin Gold LLC, is filing this vacation action on behalf of the said landowners of record. These R.S. 2477s present an impediment for these landowners' proposed development of these lands by Donlin under Donlin's lease.

STATE OF ALASKA INTEREST IN PROJECT AREA:

As per AS 19.30.400, the State of Alaska has researched, identified, accepted and assigned "revised statute trail" numbers (RST) for the Rights-of-Way granted under former 43 U.S.C. §932. The identified R.S. 2477 routes were accepted by the State (or the territory of Alaska) in trust for public use. The R.S. 2477 routes identified for vacation or partial vacation in the Donlin Gold Easement Plan (Exhibit 2) have been identified under section AS 19.30.400(d).

The State holds an interest in land identified as FAS 231, which was transferred to the State of Alaska via the Omnibus Quitclaim Deed issued by the Secretary of Commerce dated June 30, 1959. This interest includes, but is not limited to, a 100 foot-wide easement between the communities of Crooked Creek and Flat created by the federal Public Land Order 601, Public Land Order 757, Department of Interior Secretarial Order 2665, and associated authorities.

LAND MANAGEMENT POLICIES:

State lands crossed by APAR are within Subunit 10b of the 2019 Amendment and Land Classification Order No. SC-88-001A21 of the 1988 Kuskokwim Area Plan (KAP). Subunit 10b – Horn Mountains-Upper George River, designates and classifies the area for Minerals and Wildlife Habitat (page 1, Amendment and Land Classification Order No. SC-88-001A21). The classification did not change the management intent of Subunit 10b but did expand the KAP to include navigable water ways and newly acquired State-managed public land including the area in question (page 4, Amendment and Land Classification Order No. SC-88-001A21).

The Areawide Land Management Policies presented in KAP note that the primary goal is to promote and allow public access to public lands and resources, and that public recreation is an important secondary goal (Chapter 3-92, KAP). The creation of ADL 236624 will provide access to public lands currently accessible through the COA during Mine Life, as well as enhancing existing access in the area by fixing the location of a ridge-top route that will continue to exist after easements within the COA are re-opened post mine reclamation. Both actions will promote public access to public lands around the mine and promote public recreation, as such these actions are consistent with the area plan and classification order.

AGENCY REVIEW OVERVIEW:

The initial Easement Vacation petition submitted by Donlin was received on August 6, 2015. Agency comments were requested at that time. That agency review period ran from November 13, 2015, through April 28, 2016. A preliminary decision was not drafted at that time; hence, the 2015-2016 comments have not been addressed until the issuance of this PD.

Revisions to the 2015 easement vacation petition and Donlin’s Public Easement Plan were made. The revised petition and updated Public Easement Plan were received on February 2, 2022. Consequently, another Agency Review was required to solicit updated comments on the revised easement vacation petition and associated January 2022 Public Easement Plan.

The Survey Section expanded the number of agencies contacted in the 2022 Agency Review.

AGENCIES CONTACTED on November 13, 2015:

- DOT&PF Central Region
- Department of Fish and Game (ADF&G)
- SCRO
- Mental Health Trust Land Office (MHTLO)
- Division of Parks and Outdoor Recreation (DPOR)

AGENCY COMMENTS from November 13, 2015 to April 28, 2016:

The following agencies submitted comments of non-objection.

1. DOT&PF letter dated December 10, 2015, ADF&G Memorandum dated December 14, 2015, MHTLO email dated December 23, 2015.
2. The SCRO responded by email dated April 28, 2016. These comments were retracted by e-mail on May 13, 2022, due to the changes to the 2022 Donlin Public Easement Plan which invalidated the previous comments submitted in 2016.
3. DPOR submitted comments of non-objection (with provisions) in an email dated February 3, 2016. See below for comment.

Comment: On February 3, 2016, the DPOR issued a non-objection comment with the following provisions:

1. *“The RS 2477 trails which are proposed to the vacated and re-aligned are only temporarily vacated and realigned.”*
2. *“If the trails can be reclaimed after the mine operations cease, the temporary vacation should be removed and the associated realignments abandoned.”*
3. *“The temporary vacation should only go into effect if the mine receives all approvals necessary to commence development.”*

Response: The Survey Section acknowledges the comment. The revised easement vacation petition and updated Public Easement Plan (January 2022) addresses mapping of the trails during

various stages of the project. See the updated easement vacation petition, Donlin Gold Public Easement Plan January 2022 (Exhibit 2) and this Preliminary Decision for details related to the easement vacation. To be clear, there is no temporary relocation proposed at this time. Approved vacations are permanent, not temporary. Easement closures or restrictions are temporary. See this PD's Discussion Section for additional details. RST 76 is proposed for realignment but fall under the jurisdiction of the SCRO PD being public noticed concurrently. Please refer directly to the ADL 236624/ ADL 234025/ ADL 234035 PD for more information.

No other comments were received during this agency review period.

AGENCY REVIEW CONDUCTED from March 7, 2022 through April 7, 2022:

AGENCIES CONTACTED:

- DOT&PF Central Region
- ADF&G
- SCRO
- MHTLO
- DPOR
- Alaska Department of Environmental Conservation (DEC)
- DNR, DMLW Statewide Abatement of Impaired Land (SAIL)
- DNR, Division of Agriculture
- DNR, Land Conveyance Section (LCS)
- DNR, Realty Services Section
- DNR, History and Archeology
- DNR, Mining
- DNR, Division of Oil and Gas
- DNR, Public Access Assertion and Defense (PAAD)
- DNR, Office of Project Management and Permitting (OPMP)
- DNR, Resource Assessment & Development Section (RADS)
- DNR Water Resources Section
- DNR, State Pipeline Coordinator's Section (SPCS)
- Department of Commerce, Community and Economic Development, Division of Community and Regional Affairs (DCCED, DCRA)

The following Federal Agencies were contacted:

- Bureau of Land Management (BLM)
- Environmental Protection Agency
- National Park Services
- National Oceanic and Atmospheric Administration (NOAA)
- United States Army Corps of Engineers
- United States Coast Guard
- United States Fish and Wildlife Service

AGENCY COMMENTS Received in 2022:

The following agencies submitted comments of non-objection:

1. Land Conveyance Section e-mail dated March 9, 2022
2. Resource Assessment & Development Section e-mail dated April 7, 2022
3. State Pipeline Coordinator's Section e-mail dated April 7, 2022

Additional comments and responses received during this comment period are listed below.

No other comments were received during this agency review period.

Comment: On April 2, 2022, DOT&PF issued a comment of non-objection with provisions. DOT&PF confirmed the non-objection previously provided on December 10th, 2015. In the statement from 2015: *"DOT&PF does not object the temporary relocation of the public easements affected by the Donlin Gold Project provided:*

1. *The trails FAS 231, RST 76, RST 545, RST 546, RST 547, RST 548, RST 549, RST 550, RST 1475 need to be surveyed and mapped out for relocation before and after mining is complete.*
2. *The ANCSA Section 17(b) Public Easements EIN 8 C 3L, 9 D1 L, 10 D2, 11 D1, 15 D1, 21 C4, and 21 A C4 need to be surveyed and mapped for relocation before and after mining is complete.*
3. *The relocation of FAS and RST trails must be in like or better condition as their current condition.*
4. *The Donlin Gold Project Public Easement Plan will be made subject to public comment."*

Response: The Survey Section acknowledges the comment. The revised easement vacation petition and updated Public Easement Plan (January 2022) addresses mapping of the trails during various stages of the project. See the updated easement vacation petition, Donlin Gold Public Easement Plan January 2022 (Exhibit 2) and this Preliminary Decision for details related to the easement vacation. To be clear, there is no temporary relocation proposed at this time.

1. It is not standard practice to require surveys for temporary easement closures, however, SCRO acknowledges that conditions within the COA may differ post mine reclamation, and as such a development plan and survey of FAS 231 post-mine reclamation, will be required as per the SCRO PD for ADL 236624/ ADL 234025/ ADL 234035.

The segments of RST 546, RST 548, and RST 1475 that fall within the core operating area are proposed to be vacated. RST 547, RST 549, and RST 550 fall completely within the core operating area. They will be vacated (in their entirety) if the petition is approved. Segments of RST 545 falling inside and outside the COA, as indicated on Exhibit 1B, are proposed to be vacated.

The proposed vacations will only occur after donated easements 1-6 are granted and DE 1 has been established, to include survey. The interest and title to donated easements 1-6 must be formally accepted by the Department of Natural Resources in order for the vacation

to proceed. Easement vacation regulation 11 AAC 51.065 does not require a survey prior to vacation. DEs 2-6 will be dedicated prior to mining and established post-mining, to include the survey of the routes and encompassing easements. The relocated segment of RST 76 will be surveyed prior to mine life.

2. Alaska Native Claims Settlement Act Section 17(b) easements are managed by BLM, and therefore, comments regarding 17(b) terminations are outside the scope of this decision.
3. As per Donlin's January 2022 application, neither FAS 231 nor the majority of RSTs will be relocated. The realignment of RST 76 is outlined in the Discussion section of the SCRO PD for ADL 236624/ ADL 234025/ ADL 234035.

In addition, APAR will provide access around the COA, during Mine Life. APAR is outlined in the Discussion section of the SCRO PD for ADL 236624/ ADL 234025/ ADL 234035. APAR will remain after the COA is reopened.

The Donlin Gold Project Public Easement Plan (Exhibit 2) is being made subject to public comment through this PD.

Comment: Contact was made on April 7, 2022, indicating the ADF&G confirmed their original 2015 comment. The first comment was received on December 14, 2015. In the 2015 comment, the ADF&G commented with a non-objection provided the following:

1. *"Approval of any easement vacations should be contingent on final approvals for the Donlin Gold Mine development".*
2. *"The proposed easement vacations and realignments should be temporary and re-evaluated by DNR once the mine reclamation and closure activities are complete."*

Response:

1. If approved, final approvals will be outlined in a land agreement and a Preliminary Decision Performance Bonding which will be required from Donlin to DMLW for dedication and establishment of the DEs 2-6 should the mine development come to pass or not. The Bonding is covered in the SCRO PD for ADL 236624/ ADL 234025/ ADL 234035.
2. The proposed vacations and easement dedications envisioned in this PD are permanent.

The updated Public Easement Plan (January 2022) has outlined the replacement of vacated easements with like easement corridors identified as DE 2-6. A one (1) mile buffer is being incorporated into the envisioned location of the donated easements 2-6 to account for changes in the terrain after reclamation is completed to allow for the most effective location of the final established routes and encompassing easements.

Realignments and closure activity fall under the jurisdiction of the SCRO Preliminary Decision for ADL 236624/ ADL 234025/ ADL 234035 (issued concurrently with this decision). See that PD for further details on realignment and closure.

Comment: On March 30, 2022, the Alaska Department of Environmental Conservation submitted a comment asking that “the applicant adhere to the General Recommendations for General Project Activities (where applicable).”

Response: The Survey Section acknowledges the comment. The Survey Section has forwarded the “General Recommendations for General Project Activities” to Donlin. Best project management practices associated with water, drinking water, well protection and/or watersheds fall outside the jurisdiction of this easement vacation decision.

Comment: The DMLW, Southcentral Region Land Office’s, Easement Unit commented on April 13, 2022. Their comments stated:

“SCRO has no objection to the requested vacation. In the Donlin easement plan (January 2022), the applicant has proposed that the majority of RS 2477 easements petitioned for vacation are to be replaced by donated easements that will provide equal or better public access once established post mine reclamation. Post mine reclamation, donated easements are to be established within a 1-mile-wide corridor, 1/2 mile on either side of the current approximate location of RS 2477s. These corridors are to accommodate for changes in terrain likely to occur during mine development and reclamation. In the event that donated easements cannot be established within these corridors, further adjudication will be required. SCRO requires that the applicant provides the Department with a development plan detailing the proposed constructed location of donated easements for approval, post mine reclamation, and prior to construction and survey.”

Response: The Survey Section acknowledges the comment.

DISCUSSION AND FINDINGS

Requirements for Vacation of RS 2477 Easement Interests

The Department must determine if the vacation is in the State’s best interest. As a result, under AS 19.30.410, “the Department of Natural Resources . . . may not vacate [an R.S. 2477 right-of-way] . . . unless a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses.”

Mirroring AS 19.30.410, under 11 AAC 51.065(g), before any vacation, modification, or relocation of an R.S. 2477, the petitioner must demonstrate to the satisfaction of the department:

- (1) that a reasonably comparable, established alternate right-of-way or means of access exists; and
- (2) that alternate right-of-way or means of access is sufficient to satisfy all present and reasonably foreseeable uses.

A right of way or means of access is reasonably comparable if:

- (1) It provides equal or better access, which means the new access is:
 - Protected by an easement of record that is adequately wide for the purpose; if the easement of record is new, the petitioner must arrange for a note in the vacation document to be recorded that identifies the new easement as a replacement for the vacated easement; and
 - At least equally useable, considering length, type of terrain, and level of improvement, as the easement to be vacated; if development or improvement is needed to make the replacement easement at least equally useable, the petitioner must arrange for the development or improvement to be completed before the vacation takes effect; and
- (2) Between the same destinations as the R.S. 2477 right-of-way.

A right of way or means of access is sufficient to satisfy all present and reasonably foreseeable uses if it is suitable for future trail development, road development, and utility installation; assuming those are needed in the future and the department finds the R.S. 2477 being vacated is suitable for those uses.

A right-of-way or means of access is established if, before any vacation takes effect, all necessary surveying, platting, and recording have been completed, and the alternate access is ready for its intended use; the petitioner must arrange for a note in the vacation document to be recorded under (j) of this section that identifies the right-of-way or means of access that serves as a replacement for the vacated R.S. 2477 right-of-way.

Determination of the existence of R.S. 2477 easements

As per AS 19.30.400, the State of Alaska has researched, identified, accepted and assigned Revised Statute Trail (RST) numbers for the Rights-of-Way granted under former 43 U.S.C. §932. The identified R.S. 2477 routes were accepted by the State (or the territory of Alaska) in trust for public use. The R.S. 2477 routes identified for vacation or partial vacation in the Donlin Gold Easement Plan (January 2022) have been identified under section AS 19.30.400(d).

R.S. 2477s proposed to be vacated

Historically, explorers, miners, hunters, and others travelled up the Kuskokwim River disembarked and travelled north overland using main access routes north to include the route of FAS 231 north along Crooked Creek to eventually access the communities including Flat, Iditarod, and McGrath. Off from this main route, easterly and westerly routes to include RST 1475, RST 546, RST 547, RST 545 branched out to the above destinations and were interconnected to one another via the shorter RST 549, RST 548, RST 550, passing mining, hunting, and dwelling sites, forming a system of access commonly used during prior eras of mining.

The R.S. 2477 easements proposed to be vacated in their entirety are RST 547, RST 549, and RST 550. Segments of the following R.S. 2477 easements are proposed to be vacated: RST 545, RST 546, RST 548, and RST 1475. The RST easements are located across private lands, with some routes connecting to public lands. Other routes are contained entirely within private lands in the COA. Of particular note, RST 547 and RST 549 have multiple interconnecting, overlapping, and looped routes that create a grouping of easements that surround Anaconda Peak. *See below for*

additional details on each RSTs' location; note also that more information can be found in Table 1.

The proposed vacation includes the following R.S. 2477s:

1. RST 545-segment of: Return Creek-Crooked Creek Trail
2. RST 546-segment of: Return Creek Landing to Crooked Creek Ruins
3. RST 547: Dome Creek Anaconda Bell Creek Trail.
4. RST 548-segment of: Dome Creek-Anaconda-Bell Creek Trail
5. RST 549: Anaconda to Snow Gulch
6. RST 550: Crooked Creek Cabin to American Creek
7. RST 1475-segment of: Willow Creek to Flat Creek Trail.

Mapping of current locations of RSTs, as indicated on the maps and graphic depictions associated with this PD, are approximate locations based on the best available evidence and information. None of the affected RSTs are surveyed or monumented, nor have they been field verified for location data. Since the Alaska State Legislature's codification of applicable RST routes in 1998, there are no records or evidence that routes have been improved for the purpose of public access. Current use of the RST easements appears to be primarily limited to mineral exploration, with the potential for limited use for recreation and hunting. Improvements made to the underlying lands are not a function of public access improvements to RSTs but a result of mineral exploration activities. Applicable RSTs and segments are generally considered unimproved for the purpose of public access, therefore, there is no requirement to improve applicable routes for the vacation action. However, routes are proposed for improvement post Mine Life as a function of closing and opening the COA, per the SCRO PD. *See* the ADL 236624/ ADL 234025/ ADL 234035 PD issued concurrently by SCRO for additional details.

Alternate Access Analysis

Overarching Access Analysis:

The mining activities proposed will occur on private lands. This private land development will alter the underlying public access interests and disrupt easement connectivity within, and adjacent to the project area. It is inherently unsafe to allow the general public to access the COA during active mining. The proposed vacation of RSTs, and segments thereof, will minimize public safety concerns during Mine Life, provide for, and facilitate improved practical access post Mine Life. Once the lands have been reclaimed, the proposed DEs will form an interconnected public access system within and adjacent to the COA which will connect with remaining R.S. 2477s and other public access easements outside the area, utilizing the newly configured terrain more effectively for both public access and use by the landowners than the vacated RST easements and easement segments. The actions proposed herein demonstrate that the proposed access facilitated by APAR, as well as the DEs post-mine life meet the regulatory requirements of both equal or better and reasonably comparable access; providing an access network necessary for the use of the surface estate encompassing the public easement interests.

DE 2-6 corridors will be placed near current R.S. 2477 easement alignments to maintain an interconnected network of public access. The length, width and terrain will be reasonably

comparable to the current public access network. DEs 2-6 will be established as 100-foot-wide easements and as-built surveyed easements, post mine life as shown on Exhibits 1B, 1C and 1D. The location of the DEs will be adjusted within the one (1) mile corridor to best site the easements to allow for changes in the terrain after mining operations have ended and reclamation of the COA is completed. Once completed, the area will have a consolidated system of public access, with an equal or higher level of development than what currently exists that will allow the public to travel freely within the area.

A Record of Survey format as-built will be required for DE 1-6 and must be conducted in compliance with DMLW Survey Section Survey Instructions.

Below is an outline of the general steps proposed in this PD:

- Prior to active mining - Public access corridors (referred to as Donated Easements) are proposed to be donated to DMLW, DE 2-6 will be replacement easements for the vacated R.S. 2477 easements in the COA. In total, six donated easements would be required. The public access corridor easements would be serialized as DE 1-6.

DE 1 will provide access as a portion of APAR prior to active mining. APAR will provide public access around the COA, during Mine Life and thereafter. DE 1 will serve as a replacement for the segment of RST 545 proposed to be vacated. RST 545 is unique in the sense that it falls both outside of, and within, the COA. For additional information regarding DE 1 and APAR, refer to the ADL 236624/ ADL 234025/ ADL 234035 PD issued by SCRO.

DEs 2-6 will provide access as replacements for the proposed vacation of RST 547, RST 549, RST 550 and segments of RST 546, RST 548, and RST 1475. DEs 2-6 will be established through a land agreement adjudicated by the Realty Services Section. The land agreement will ensure proper title and interest in DEs 2-6 are obtained specifying the one (1) mile-wide easement corridors intended for the final placement and construction post-Mine Life.

- During Mine Life – APAR is proposed to provide public access around the COA connecting public lands and public access easements in the vicinity. DEs 2-6 are proposed to be closed for public safety purposes during the active mining. For additional closure information refer to the ADL 236624/ ADL 234025/ ADL 234035 PD.
- Post-Mine Life - After mining operations cease, DEs 2-6 will be established and opened for public use once determined safe for public access. For additional information refer to the ADL 236624/ ADL 234025/ ADL 234035 PD.

While many of the R.S. 2477s discussed in this Decision are part of an interconnected transportation network, with destinations both within and outside the COA, current information indicates that there are several R.S. 2477s which both commence, terminate, and are contained entirely within the COA and thus entirely on private land. It is presumed that these, like most R.S. 2477s in this area, arose from mining activity. In these areas where the route simply terminates

within the COA, it is likewise presumed that there was an active surface activity (mining operation or otherwise) at this termination point.

Because some of these R.S. 2477s commence and terminate within the COA, those RS 2477s have a different “reasonably foreseeable uses” easement vacation analysis. R.S. 2477s are intended to allow for public access between destinations to facilitate development of the land or resources. Where an RST terminates on private property and there is no longer any third-party interest such as a mining claim or private property inholding, there is no longer a need to rely on an R.S. 2477 to facilitate access or development. The landowner is free to use the entirety of their property for access purposes, and thus there is no reasonably foreseeable need to use the rights granted and protected by the R.S. 2477s. Should the landowner need to establish access to this termination point, they are likely to choose a different route that better fits their intended use of the surrounding lands as a landowner is free to do on their land.

Lastly, none of these R.S. 2477s are surveyed. Absent litigation, the proper location and depiction of an R.S. 2477 is not always known.² For the public, these R.S. 2477s provide access, but access with legal uncertainty. For purposes of the reasonably comparable analysis below, the donated easements provide legal certainty these R.S. 2477s presently do not.

RST 545: Return Creek-Crooked Creek Trail

Existing Conditions:

Location – The route known as the Return Creek-Crooked Creek Trail is serialized by DNR as RST 545. The easement segment proposed for vacation is located in Sections 17,18, 20, and 21 of Township 22 North, Range 49 West, and Sections 1, 12, and 13 Township 22 North, Range 50 West, Seward Meridian. The segment of RST 545 is further described as beginning at its intersection with FAS 231 inside the COA, running generally northwest across the southwest corner of the COA. The segment then exits the COA and ends at State-owned, DMLW-managed lands at the west boundary of Section 1 of Township 22 North, Range 50 West, Seward Meridian.

Length & Width – The segment proposed for vacation is approximately 6 miles long between FAS 231 and the boundary of State-owned, DMLW-managed lands and is 100 feet in width.

Terrain - The terrain along this segment is generally comprised of gentle sloping hills and peaks, ridge lines above the vegetation line, and valleys containing creeks and dense vegetation.

Present Use & Improvements – Aerial inspections and imagery indicate there is limited evidence of present use or impacts on-the-ground. The route is un-surveyed and DMLW has no record or evidence authorizing improvements of RST 545.

Destinations - The route has destinations that include Crooked Creek, Return Creek, Eagle Creek, unnamed drainages, and unnamed hills/peaks.

² *Fitzgerald v. Puddicombe*, 918 P.2d 1017 (Alaska 1996); *Puddicombe v. Fitzgerald*, 1999 WL 33958803, fn. 9 (Alaska 1999); *AHTNA, Inc. v. Dept. of Natural Resources*, 2021 WL 938371 * 2 (Alaska 2021); and *Price v. Eastham*, 75 P.3d 1051, 1055 (Alaska 2003).

Reasonably Comparable Alternative Access:

The alternative easement proposed to replace RST 545 is DE 1. DE 1 is proposed to be granted by the underlying landowners and accepted by DMLW, followed by the subsequent recording of an as-built survey approved by the DMLW Survey Section. DE 1 is proposed to be accepted by DMLW prior to Mine Life. Per the SCRO PD, Post-mine-life the route will be improved on the ground and surveyed, an encompassing final 100'-wide easement designed and described to lie within the one (1) mile-wide corridor, and record of survey recorded, as per DNR Survey Section survey instructions. The route will be located generally along the same alignment as RST 545 except near and at its intersection with FAS 231 in Sections 20 and 21 of Township 22 North, Range 49 West. At this location, the route will be repositioned to the south, outside the COA. The remaining segment of DE 1 will overlay the current route of RST 545, therefore it will be approximately 6 miles long, traversing the same terrain, and will provide access to the same destinations. The character of DE 1 will be comparable to RST 545 and therefore is expected to accommodate all present and reasonably foreseeable uses. It is not expected that this route will need to provide public access improvements beyond trail use in the foreseeable future.

DE 1 is a reasonably comparable alternative route that will provide better access than that which is currently provided in RST 545, as it is proposed to have access improvements developed to a higher standard than are currently provided by RST 545. As proposed, DE 1 will be established, adequately wide, have increased useability, provides access to the same destinations while accommodating all present and reasonably foreseeable uses. In addition, DE 1 as proposed, shall secure a greater level of certainty in the legal public access granted by the underlying landowners.

As a segment of APAR, improvements to DE 1 are outlined in the SCRO PD as provisions associated with the creation and maintenance of APAR.

RST 546: Return Creek Landing to Crooked Creek Ruins

Existing Conditions:

Location – The route known as the Return Creek Landing to Crooked Creek Ruins is serialized by DNR as RST 546. The segment proposed for vacation is located in Sections 28, 33, and 34 of Township 23 North, Range 49 West, Seward Meridian. The segment begins at an intersection with FAS 231 and travels westerly to the west boundary of Section 28, the COA boundary.

Length & Width – The segment proposed for vacation is approximately 1.5 miles long and is 100 feet wide.

Terrain - The terrain of this segment follows along Grouse Creek in a valley with dense vegetation.

Present Use & Improvements – Aerial inspections and imagery indicate there is evidence of impacts in the form of an unmaintained trail route on-the-ground, with an approximately width of 10 feet. The route is un-surveyed and DMLW has no record or evidence authorizing improvements of RST 546.

Destinations - The route's destinations include Crooked Creek, Grouse Creek, unnamed drainages, and unnamed hills/peaks.

Reasonably Comparable Alternative Access:

The alternative easement proposed to replace RST 546 is DE 2. The lands underlying the portion of RST 546 to be vacated are expected to be impacted by mining, therefore DE 2 is proposed to be granted by the underlying landowners and then accepted by DMLW, followed by the subsequent recording with a record of survey. Specifically, DE 2 will be granted as a one (1) mile-wide easement corridor prior to Mine Life. Post-mine reclamation, per the SCRO PD, the post-mine-life route will be improved on the ground, and surveyed, and an encompassing final 100'-wide easement designed and described to lie within the one (1) mile-wide corridor, and record of survey recorded, as per DNR Survey Section survey instructions. DE 2 will follow the same alignment as RST 546, therefore the length, terrain, and destinations are equal. In addition, the character of the DE 2 will be similar and therefore, it is expected that all uses will be accommodated. It is not expected that this route will need to provide public access improvements beyond trail use in the foreseeable future.

DE 2 will be a reasonably comparable alternative route that is better than the access provided in RST 546 because, as proposed, it will secure a greater level of certainty in the legal public access granted by the underlying landowners. As described, DE 2 will be established, adequately wide, have increased useability, and will provide access to the same destinations while accommodating all present and reasonably foreseeable uses.

RST 547: Donlin Creek-Dome Creek-Crooked Creek via Omega Trail

Existing conditions:

Location – The route known as Donlin Creek-Dome Creek-Crooked Creek via Omega Trail is serialized by DNR as RST 547. RST 547 is proposed for vacation in its entirety. The R.S. 2477 proposed for vacation is located in Sections 4, 5, 7, 8, and 9 of Township 22 North, Range 48 West; Sections 2, 3, 11, and 12 of Township 22 North, Range 49 West; Sections 18, 19, 20, 28, 29, 32, and 33 of Township 23 North, Range 48 West; and Section 13 of Township 23 North, Range 49 West, Seward Meridian. RST 547 beginning at RST 1475 near the confluence of Donlin Creek and Dome Creek, running east along Dome Creek and then south, following gentle slopes and crossing ridgelines towards Anaconda Peak, and then west along ridge-tops until descending into Omega Gulch to its intersection with FAS 231. RST 547 intersects with RST 548 and RST 549 between Anaconda Peak and Omega Gulch. Looped, dead-ending, and/or spur segments of RST 547 are located in the vicinity of Omega Gulch and Anaconda Peak. Historic use may have provided access to mine sites in Sections 28, 29, 31, 32, and 33 of Township 23 North, Range 48 West, and Sections 4, 5, 6, 8 and 9 of Township 22 North, Range 48 West, Seward Meridian.

Length & Width – The segment proposed for vacation is approximately 11 miles long and is 100-feet in width.

Terrain - The terrain along this route is generally comprised of gentle sloping hills and peaks, ridge lines above the vegetation line, and valleys containing creeks and dense vegetation.

Present Use & Improvements – Aerial inspections and imagery indicate the much of the RST has established trails; landowner developed roads and trails primarily used for resources exploration intersect or are partially coincident with portions of this RST. Some recreation and hunting use may also exist. The route is un-surveyed and DMLW has no record or evidence authorizing improvements in RST 547.

Destinations – The route has destinations that include Omega Gulch, Anaconda Peak, Dome Creek, Donlin Creek, unnamed drainages, and unnamed hills/peaks.

Reasonably Comparable Alternative Access:

The alternative easements proposed to replace RST 547 are DE 3, DE 5, and DE 6. The lands underlying RST 547 are expected to be impacted by mining, therefore, DE 3, DE 5, and DE 6 are proposed to be granted by the underlying landowners and the accepted by DMLW, followed by the subsequent recording with a record of survey. Specifically, DE 3, DE 5, and DE 6 will be established as a one (1) mile-wide easement corridor, prior to Mine Life. Per the SCRO PD, post-mine-life, the route will be improved on the ground and surveyed, an encompassing final 100'-wide easement designed and described to lie within the one (1) mile-wide corridor, and record of survey recorded, as per DNR Survey Section survey instructions.

DE 3, DE 5, and DE 6 will follow the same alignment as RST 547, with the exception of DE 5 which is proposed to be aligned with the north-south route of RST 548. The alternative replacement easement deviates from the original route because the underlying landscape is expected to be modified due to mining extraction activities and reclamation will preclude future public access from the north-south running segment of RST 547 and 549. In addition, this location is the proposed site of the Mine's waste rock pit and associated infrastructure, therefore is not an option to support public access. Therefore, the route's length adjustment further to the east is expected to be approximately 1.5-2 miles longer, but the terrain will remain the same. DE 5 is proposed to replace the south-north segments of RST 547 and RST 549 to create a consolidated and interconnected travel corridor between DE 3 and DE 6, running east to west, in the same general location as the northerly east to west segment of RST 547, and connecting to DE 4. In addition, the character of DE 3, DE 5, and DE 6 will be similar that of RST 547, with minor adjustments in location and therefore it is expected that all uses will be accommodated by DE 3, DE 5, and DE 6. It is not expected that this route will need to provide public access improvements beyond trail and road use in the foreseeable future.

DE 3, DE 5, and DE 6 are a reasonable comparable alternative route that is equal or better than the access provided in RST 547 because, as proposed, the DEs will secure a greater level of certainty in the legal public access granted by the underlying landowners. As described, DE 3, DE 5, and DE 6 will be established, adequately wide, equally usable, access the same destinations while accommodating all present and reasonably foreseeable uses.

Furthermore, one spur of RST 547 terminates within privately owned lands; thus it provides no access to public lands. As discussed in the "Overarching Access Analysis" section, there is no reasonably foreseeable need for this spur. This reinforces the legal appropriateness of DE 3, DE 5, and DE 6.

RST 548: Dome Creek-Anaconda-Bell Creek Trail

Existing conditions:

Location – The route known as Dome Creek-Anaconda-Bell Creek Trail is serialized by DNR as RST 548. The segment proposed for vacation is located in Section 4 of Township 22 North, Range 48 West and Sections 20, 21, 22, 28, 33, and 34 of Township 23 North, Range 48 West, Seward Meridian. RST 548 runs northwest from southeast boundary of the COA to a fork of RST 548 in section 21 of Township 23 North, Range 48 West. A segment of RST 548 runs from the fork westerly to intersect RST 547 in Section 20. Another segment of RST 548 runs from the fork easterly through section 21 to the east boundary of section 22, the east boundary of the COA, continuing easterly outside the COA to intersect with RST 76.

Length & Width – The segment proposed for vacation is approximately 5 miles long and is 100-feet in width.

Terrain - The terrain along this route is generally comprised of gentle sloping hills and peaks, ridge lines above the vegetation line, and valleys containing creeks and dense vegetation.

Present use & improvements – Aerial inspections and imagery indicates varying levels of trail usage for resource exploration, recreation and hunting. The route is un-surveyed and DMLW has no record or evidence authorizing improvements in RST 548.

Destinations - the route has destinations that include Anaconda peak, unnamed drainages, and unnamed ridges/peaks.

Reasonably comparable alternative access

The alternative easements proposed to replace RST 548 (and all associated loops and spurs) is DE 5 and DE 3. DE 5 and DE 3 are proposed to be granted by the underlying landowners and accepted by DMLW, followed by the subsequent recording of a record of survey. Specifically, DE 5 and DE 3 will be granted as one (1) mile-wide easement corridors prior to Mine Life. Per the SCRO PD, post-mine-life, the routes will be improved on the ground and surveyed, encompassing final 100'-wide easements designed and described to lie within the one (1) mile-wide corridors. The record of survey will then be recorded per DNR Survey Section survey instructions. DE 5 and DE 3 will follow the same alignment as RST 548, therefore the length, terrain, and destinations are equal. In addition, the character of the DE 5 and DE 3 will be similar. Therefore, it is expected that all uses will be accommodated. It is not expected that these routes will need to provide public access improvements above trail use in the foreseeable future.

DEs 5 and 3 are reasonably comparable alternative routes that are equal or better than the access provided in RST 548 because, as proposed, DE 5 and DE 3 will secure a greater level of certainty in the legal public access granted by the underlying landowners. As described, proposed DE 5 and DE 3 are established, adequately wide, equally usable, access the same destinations while accommodating all present and reasonably foreseeable uses.

RST 549: Anaconda to Snow Gulch

Existing condition:

Location – The route known as Anaconda to Snow Gulch is serialized by DNR as RST 549. The entirety of RST 549 is proposed for vacation. RST 549 is located in T22N, R49W Section 2 and T23N, R48W Section 30, 31, and 32, Seward Meridian. RST 549 runs northerly, possibly ending at Snow Gulch, a mine site near the south boundary of Sec. 30, T23N, R48W. From RST 547, (Donlin Creek-Dome Creek-Crooked Creek via Omega) northerly, possibly ending at Snow Gulch, a mine site near the south boundary of Sec. 30, T23N, R48W. Possibly extended to the northerly east-west branch of RST 547. An easterly branch is shown on various maps running south to north, passing Anaconda Peak, and lying $\frac{3}{4}$ of a mile east of the west branch, originating south of RST 547, travelling north across RST 547, and past Anaconda Peak on the west and running north along the Anaconda Peak ridge for two miles.

Length & width – The segment proposed for vacation is approximately 2.5 miles long and is 100 feet in width.

Terrain - The terrain along this route is generally comprised of gentle sloping hills and peaks, ridge lines above the vegetation line, and valleys containing creeks and dense vegetation.

Present use & improvements – Aerial inspections and imagery indicates varying levels of trail impacts used for resource exploration, recreation and hunting use may also exist. The route is un-surveyed and DMLW has no record or evidence authorizing improvements in RST 549.

Destinations - The route has destinations that include Anaconda peak, unnamed drainages, and unnamed hills/peaks.

Reasonably comparable alternative access

The alternative easement proposed to replace RST 549 (and all associated loops, dead-ends and spurs) is DE 5. The lands underlying the location of RST 549 are expected to be impacted by mining, therefore, DE 5 is proposed to be granted by the underlying landowners and accepted by DMLW, followed by the subsequent recording with a record of survey. Specifically, DE 5 will be granted as a one (1) mile-wide easement corridor, prior to Mine Life. Per the SCRO PD, post-mine-life, the route will be improved on the ground and surveyed, an encompassing final 100'-wide easement designed and described to lie within the one (1) mile-wide corridor, and record of survey recorded, as per DNR Survey Section survey instructions.

DE 5 will follow the same north-south running alignment as RST 548, which is to the east of RST 549's route because the underlying landscape is expected to be modified due to mining extraction activities and reclamation will preclude future public access from the north-south running segment of RST 549. In addition, this location is the site of the Mine's waste rock pit and associated infrastructure; there is no other known feasible alternative route to support public access. As such, the length, terrain, and destinations of DE 5 are the same as RST 549. Furthermore, the character of the DE 5 will be similar, and it is expected that all uses will be accommodated. It is not expected that this route will need to provide public access improvements above trail use in the foreseeable future.

DE 5 is a reasonable comparable alternative route that is equal or better than the access provided in RST 549 because, as proposed, DE 5 will secure a greater level of certainty in the legal public access granted by the underlying landowners. As described, proposed DE 5 is established, adequately wide, equally usable, access the same destinations while accommodating all present and reasonably foreseeable uses.

Further, RST 549 is entirely located within private property, and while it intersects RST 547, all termination points are within privately owned lands. As discussed in the “Overarching Access Analysis” section, there is no reasonably foreseeable need for the various loops and dead ends recognized for RST 549. This reinforces the legal appropriateness of DE 5.

RST 550: Crooked Creek Cabin to American Creek

Existing condition (location, length & width, terrain, present use & improvements, destinations):

Location – The route known as Crooked Creek Cabin to American Creek is serialized by DNR as RST 550. The entirety of RST 550 is proposed for vacation. The proposed vacation is located in T22N, R49W Section 2 and T23N, R49W Sections 30, 31, and 32, Seward Meridian.

Length & width – The segment proposed for vacation is approximately 1.5 miles long and is 100 feet in width.

Terrain - The terrain along this route is generally comprised of gentle sloped lowlands containing creeks and dense vegetation.

Present use & improvements – Aerial inspections and imagery indicates the route is overlaid with development such as roads, trails, gravel pads and drill sites, employee camps, an airstrip used for resource exploration. There is a lesser likelihood of recreation and hunting use in this area. The route is un-surveyed and DMLW has no record or evidence authorizing improvements in RST 550.

Destinations - The route has destinations that include Lewis Gulch and American Creek

Reasonably comparable alternative

The alternative easement proposed to replace RST 550 is FAS 231. The lands underlying the location of RST 550 are expected to be obliterated by mine development and is proposed to be the site of an open pit. Therefore, FAS 231 is proposed to be established, post Mine Life by an as-built survey, in accordance with an agreement that will bind all parties if associated approvals are granted.

RST 550 will be replaced with portions of the existing FAS 231 to access destinations such as Crooked Creek, Lewis Gulch and American Creek.

FAS 231 is a reasonable comparable alternative route that is equal or better than the access provided in RST 550 because FAS 231 is a fully recognized legal public access route by the

underlying landowners. FAS 231 is a fully established, adequately wide, equally usable existing access, with the same destinations that will accommodate all present and reasonably foreseeable uses.

Further, RST 550 starts at FAS 231 and terminates within privately owned lands on American Gulch. As discussed in the “Overarching Access Analysis” section, there is no reasonably foreseeable need for public use of this route to this destination. However, it is noted that FAS 231 will continue to provide access to the lower reaches of American Gulch and thus satisfies the legal requirements as outlined above

RST 1475: Willow Creek to Flat Creek Trail.

Existing condition (location, length & width, terrain, present use & improvements, destinations):
Location – The route known as Willow Creek to Flat Creek Trail and is serialized by DNR as RST 1475. The proposed for vacation is located in T23N, R48W Section 6 and T23N, R49W Sections 1, 12, 13, 14, and 23 Seward Meridian. The west end of RST 1475 begins at FAS 231 and runs east from Flat Creek along Donlin Creek, through the Lyman Family property to an intersection with the west end of RST 547, and then northeasterly out of the COA to connect to the remainder of RST 1475 heading northeast.

Length & width – The segment proposed for vacation is approximately 4 miles long and is 100 feet in width.

Terrain - The terrain along this route is generally along valleys containing creeks and dense vegetation but also comprised of gentle sloping hills and peaks, ridge lines above the vegetation line.

Present use & improvements – aerial inspections and imagery indicates the route is overlaid with development such as roads, trails, gravel pads and drill sites, employee camps, an airstrip used for resource exploration. There is less likelihood of recreation and hunting use in this area due to current development and industrial activities. The route is un-surveyed and DMLW has no record or evidence authorizing improvements in RST 1475.

Destinations - the route has destinations that include Flat Creek, Donlin Creek, Snow Gulch, Quartz Gulch, Dome Creek, Ophir Creek, and unnamed hills/peaks near Donlin peak.

Reasonably comparable alternative access

The alternative easements proposed to replace RST 1475 are DEs 3 and 4. DEs 3 and 4 are proposed to be granted by the underlying landowners and acceptance by DMLW, followed by the subsequent recording with a record of survey. Specifically, DEs will be granted as a one (1) mile-wide easement corridor, prior to Mine Life. Per the SCRO PD, post-mine-life, the route will be improved on the ground and surveyed, an encompassing final 100’-wide easement designed and described to lie within the one (1) mile-wide corridor, and record of survey recorded, as per DNR Survey Section survey instructions.

DEs 3 and 4 will follow the same alignment as RST 1475. As such, the length, terrain, and destinations of are the same. Furthermore, the character of the DEs 3 and 4 will be similar, and it is expected that all uses will be accommodated. It is not expected that this route will need to provide public access improvements above road and trail use in the foreseeable future.

DEs 3 and 4 are a reasonable comparable alternative route that is equal or better than the access provided in RST 1475 because, as proposed, DEs 3 and 4 will secure a greater level of certainty in the legal public access granted by the underlying landowners. As described, proposed DEs 3 and 4 are established, adequately wide, equally usable, access the same destinations while accommodating all present and reasonably foreseeable uses.

Final Findings

The Survey Section finds that given the information described herein, the petitioner has demonstrated to the satisfaction of the DMLW that the proposed vacation of referenced RS 2477s and the acceptance of DEs is in the best interests of the State. As proposed, the DEs will provide a reasonably comparable, established alternative means of access that is equal or better as compared to the existing RSTs proposed for vacation. The result will satisfy all present and reasonably foreseeable uses as the DEs are equally usable, of a comparable length, width, type of terrain and level of improvement, accommodating all present and reasonably foreseeable uses and improvements, meeting 11AAC 51.065(g) requirements.

The RSTs are proposed for vacation as opposed to closure due to the inherit uncertainty of the future condition of the underlying lands given the unknown extent of the Mine's development and associated infrastructure. It is plausible that future administrative action with regard to access will be required at the end of Mine Life to ensure the public's safety.

Additionally, this action will result in a system that is surveyed with acceptance and acknowledged by all parties. The certainty provided by DEs will allow the public to access applicable private lands unfettered and in perpetuity. Therefore, it may be in the State's best interest to approve this action.

PERFORMANCE GUARANTY AND INSURANCE

A performance guaranty and insurance will be required by the SCRO PD in order to ensure compliance. *See* the SCRO PD for complete details.

Approval of the proposed action is contingent upon the following conditions:

1. Acceptance of DEs 1 - 6 must be formally accepted by DMLW and recorded.
2. Approval of a State Platting Resolution in conjunction with this EV 3-244.
3. Submittal of a Certificate to Plat current within 90 days.
4. A final plat to vacate the easements (landowner signed/ submitted by a surveyor/ sealed mylar) must be submitted within 10-years from the date of the vacation approval. The survey plat must be filed in accordance with the provisions of AS 40.15.300-380; in

particular this plat must include a note that identifies the DEs are a replacement for the vacated RS 2477s.

PUBLIC NOTICE OF THE PRELIMINARY DECISION:

Consistent with AS 38.05.945, this preliminary decision will be advertised for 45-day public comment period. Notice will be posted on the Alaska Online Public Notice System at <http://aws.state.ak.us/OnlinePublicNotices/Default.aspx> and the post offices located in Bethel, Aniak, McGrath, Shageluk, Anvik, Grayling, Kwethluk, Takotna, Holy Cross, Crooked Creek, Russian Mission, Red Devil, Stoney River, Lower Kalskag, Upper Kalskag, Akiachak, and Sleetmute. Courtesy notices will also be mailed or emailed to neighboring property owners, permit/leaseholders, and other interested parties on June 29, 2022 for a 45-day public comment period.

Persons wanting to provide comments on the proposed easement vacation can **submit their comments in writing, by e-mail or via the scheduled public hearing. In order to be eligible to appeal under AS 38.05.035(i)(j), meaningful participation by one of these methods is required. In order to ensure consideration, comments must be received on or before August 15, 2022.** Correspondence should be addressed to DNR, DMLW, Survey Section, Attn: Victoria Braun, 550 W. 7th Ave., Suite 650, Anchorage, Alaska 99501. Comments can be submitted via e-mail at dnr.scro.donlin@alaska.gov. Please reference EV 3-244 in your correspondence, include your name, mailing address and telephone number to ensure you receive copies of all subsequent decisions.

Notice is hereby given that the Department of Natural Resources, under the authority of 11 AAC 51.065(b) and AS 40.15.305, shall hold a public hearing. The hearing concerns the easement vacation petition submitted by the Donlin Gold Mine, LLC for the vacation and partial vacation of RST 2477 easements in and near the Core Operating Area designated in this preliminary decision. Due to the COVID-19 pandemic the public hearing will be held **via teleconference at 11:00am on August 1, 2022.** Persons wishing to attend the public hearing must call 1-800-315-6338; at the prompts enter access code 98627 and #.

This decision is subject to both public and agency comments, and all written comments received by the comment deadline will be considered in the FFD. Pursuant to 11 AAC 02.010(d), DNR is restricting appeal rights to those who meaningfully participate as well as the applicant. If public comments result in significant changes to the Preliminary Decision, additional public notice will be given.

PRELIMINARY DECISION:

The proposed vacation may be in the State's best interest. Changes to the use of public access and the public interest as a result of the activity are acceptable. Therefore, the Division of Mining, Land and Water, Survey Section recommends approval of these actions and may proceed with adjudication and public notice in accordance with AS 38.05.945 and 40.15.305(e).

Prepared by:

Victoria Braun

Victoria Braun
Adjudicator

June 28, 2022

Date

Approved by:

Gwendolyn Gervelis

Gwendolyn Gervelis, PLS
Chief, Survey Section

6/28/2022

Date

Exhibits

- Exhibit 1 – Donlin Mine Easement Plan Diagrams
- Exhibit 2 – Donlin Gold Public Easement Plan (January 2022)

PUBLIC NOTICE:

**Department of Natural Resources
Notice of Public Hearing
Notice of Preliminary Decision
EV 3-244**

Per 11 AAC 51.065, AS 19.30.410 and AS 38.05.945, the Department of Natural Resources, Division of Mining, Land and Water has made a Preliminary Decision (PD) giving contingent approval to a petition to vacate all or segments of several RST 2477 easements. More particularly described under AS 19.30.400 as RSTs 547, 549, & 550, and segments of RSTs 545, 546, 548, and 1475. This action is located approximately 10 miles north of the Village of Crooked Creek, AK within Townships 22 & 23 North, Ranges 48, 49, and 50 West, Seward Meridian, Alaska. Please see the Preliminary Decision for full details. Copies are available at: <https://aws.state.ak.us/OnlinePublicNotices/>. The public notice advertising cost in a newspaper of statewide circulation is at the expense of the applicant.

Persons wanting to provide comments on the proposed easement vacation can **submit their comments in writing, by e-mail or via the scheduled public hearing. In order to be eligible to appeal under AS 38.05.035(i)(j), meaningful participation by one of these methods is required. In order to ensure consideration, comments must be received on or before August 15, 2022.** Correspondence should be addressed to DNR, DMLW, Survey Section, Attn: Victoria Braun, 550 W. 7th Ave., Suite 650, Anchorage, Alaska 99501. Comments can be submitted via e-mail at dnr.scro.donlin@alaska.gov. Please reference EV 3-244 in your correspondence, include your name, mailing address and telephone number to ensure you receive copies of all subsequent decisions.

Notice is hereby given that the Department of Natural Resources, under the authority of 11 AAC 51.065(b) and AS 40.15.305, shall hold a public hearing. The hearing concerns the easement vacation petition submitted by the Donlin Gold Mine, LLC for the vacation (or partial vacation) of RST 2477 easements in and near the Core Operating Area designated in the preliminary decision. Due to the COVID-19 pandemic the public hearing will be held **via teleconference at 11:00am on August 1, 2022.** Persons wishing to attend the public hearing must call 1-800-315-6338; at the prompts enter access code 98627 and #.

If public comment in response to this notice indicates the need for significant changes to the Preliminary Decision, additional public notice will be given. If no significant change is required, the Preliminary Decision, including any minor changes, will be issued as a Final Decision.

The Division of Mining, Land, & Water reserves the right to waive technical defects in this publication.

Individuals with audio impairments who require special accommodations should call TDD (907) 269-8411, on or before August 15, 2022.

Please post thru August 15, 2022.

**APPENDIX A
TABLES:**

Table 1: RS 2477 proposed for vacation and co-located 17(b) easements

DNR Easement Name and/or general description	DNR Case #	BLM Case #	MTRS
Return Creek — Crooked Creek	RST 545	EIN 15 D1 (coincident in part)	S.M. T22N R49W, Sections 17,18, 20, 21 S.M. T22N R50W Sections 1, 12, 13
Return Creek Landing — Crooked Creek Ruins	RST 546	EIN 8 C3,L	S.M. T23N R49W Sections 28, 33, 34
Donlin Creek — Dome Creek — Crooked Creek via Omega	RST 547	EIN 10 D1 EIN 9 D1, L	S.M. T22N R48W Sections 4, 5, 7, 8 ,9 S.M. T22N R49W Sections 2, 3, 11, 12 S.M. T23N R48W Sections 18, 19, 20, 28, 29, 32, 33 S.M. T23N R49W Section 13
Dome Creek — Anaconda — Bell Creek	RST 548	EIN 9 D1, L	S.M. T22N R48W Section 4 S.M. T23N R48W Sections 20, 21, 22, 28, 33, 34
Anaconda — Snow Gulch	RST 549	None	S.M. T22N R48W Section 5, 6, 8 S.M. T23N R48W Section 30, 31, 32
Crooked Creek Cabin — American Creek	RST 550	None	S.M. T22N R49W Section 2 S.M. T23N R49W Sections 26, 27, 35
Willow Creek — Flat Creek Trail	RST 1475	EIN 9 D1, L	S.M. T23N R48W Section 6 S.M. T23N R49W Sections 1, 12, 13, 14, 23

TABLES (continued):

Table 2: Donated Easements Location Information

Donated Easement	Grantor	Township Range	Meridian
Donated Easement #1 (DE 1)	TKC	22 North, 49 West 22 North, 50 West	Seward
Donated Easement #2 (DE 2)	TKC, Calista	23 North, 49 West	
Donated Easement #3 (DE 3)	TKC, Calista	23 North, 48 West 23 North, 49 West	
Donated Easement #4 (DE 4)	TKC	23 North, 48 West 23 North, 49 West	
Donated Easement #5 (DE 5)	TKC, Calista	22 North, 48 West 23 North, 48 West	
Donated Easement #6 (DE 6)	TKC, Calista	22 North, 48 West 22 North, 49 West	

Table 3: Core Operating Area Location information:

Township Range	Sections	Meridian
22 North, 48 West	4-9, 17-20	Seward
22 North, 49 West	1-5, 8-17, 21-24	
23 North, 48 West	3-10, 15-22, 27-34	
23 North, 49 West	1, 10-15, 21-28, 33-36	

**APPENDIX B
DEFINITIONS:**

Alternative Public Access Route (APAR): A bypass public access route around the COA, while the COA is closed to public access. This overall route is composed of DE 1, and RST 76 and the public access easement created by SCRO, serialized as ADL 236624.

Closure: A temporary restriction of the public's use of an access easement.

Establishment: all necessary surveying, platting, and recording have been completed.

Mine operation: The function, work, facility, and activity in connection with the development, extraction, and processing of a locatable or leasable mineral deposit except oil, gas, or coal other materials or of a sand and gravel deposit; and each use reasonably incident to the development, extraction, and processing of a locatable or leasable mineral deposit or materials; includes the construction of facilities, roads, transmission lines, pipelines, and other support facilities.

Mine reclamation: An operator's responsibility to return lands to a safe condition after the mine's economic life, including activity approved by the State via a reclamation plan to stabilize and manage/minimize environmental hazards created by mine operation present.

Mine Life: A collective term to include mine development, operation, and mine reclamation.

The Mine: The Donlin Gold Project

Public access easement: An easement which allows access by the public and may be used any mode of transportation appropriate for level of development existing in the easement.

R.S. 2477: Highway easements asserted or established under former 43 U.S.C. § 932 (Act of July 26, 1866, 14 Stat. 251).

Reasonably Comparable Alternative Access: Established, equally usable in length, width, terrain, and improvements; reaches the same destinations, accommodates present and foreseeable uses – trail/road/utility development, exists and is established, is equal or better.

Vacate: To permanently relinquish, release, or extinguish a right or interest in property according to the regulations of the local platting authority.

APPENDIX C
ACRONYMS:

APAR: Alternate Public Access Route

BLM: Bureau of Land Management

CC: Calista Corporation

COA: Core Operating Area

DE(s): Donated Easement(s)

DEC: Alaska Department of Environmental Conservation

DEH: Division of Environmental Health

DMLW: Division of Mining, Land and Water

DNR: Department of Natural Resources

DOG: Division of Oil & Gas

DOW: Division of Water

DPOR: Division of Parks and Outdoor Recreation

EA: Entry Authorization

PD: Preliminary Decision

SCRO: Southcentral Regional Land Office

TKC: The Kuskokwim Corporation