

STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINING, LAND AND WATER  
SOUTHCENTRAL REGIONAL LAND OFFICE

## PRELIMINARY DECISION

ADL 236624 – Creation of a Public Access Easement

ADL 234025 – Closure of Easements

ADL 234035 – Partial realignment of RST 76

Donlin Gold LLC – Application to temporarily remove all public access from the mine’s core operating area for public safety.

Reader’s guide concerning the format of this document

- **REQUESTED ACTION** through **RECOMMENDED ACTION** provides a general summary of the request and the resulting decision.
- **SCOPE OF DECISION** through **CLASSIFICATION & PLANNING** address whether the Southcentral Regional Land Office (SCRO) may consider the requested action.
- **AGENCY REVIEW** through **DISCUSSION** summarizes SCRO’s decision regarding whether to approve the request.
- **FEES** through **SURVEY** document required deliverables if the request is approved.
- **ENTRY AUTHORIZATION** establishes a time frame to construct and survey the proposed project prior to easement issuance.
- **APPENDICES** supporting tables, definitions, and acronyms.

This Preliminary Decision (PD) is the initial determination on a proposed disposal of interest 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 August 15, 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 petitioner and those who comment during the comment period have the right to appeal the Final Finding and Decision (FFD).

### REQUESTED ACTION

On February 2, 2022, the Department of Natural Resources (DNR), Division of Mining, Land & Water (DMLW), Southcentral Regional Land Office (SCRO) received an updated application from Donlin Gold LLC (Donlin) for several easement procedures on private lands owned by the Calista Corporation (CC), The Kuskokwim Corporation (TKC), and the Lyman Revocable Living Trust. Donlin has leased these private lands to develop the Donlin Gold Project (the Mine). Donlin proposes to temporarily close public access from the Mine’s Core Operating Area (COA) to safeguard the public during the Mine’s development, operation, and reclamation, as further outlined in Donlin’s Development Plan found in Exhibit 2.

The purpose of this PD is to consider:

1. Creation of alternative access connecting public lands to public lands to be approximately 13.5 miles in length, 100 feet in width, and an area of 165 acres, on State lands around the COA, serialized by DMLW as ADL 236624,
2. Closure of a segment of the Federal Aid System (FAS) route, serialized as FAS 231, and the proposed Donated Easements (DEs) within the Mine's COA, serialized by DMLW as ADL 234025, and
3. Realign a portion of the Revised Statute (R.S.) 2477 easement, serialized as Revised Statute Trail (RST) 76, out of the COA and onto State lands, serialized by DMLW as ADL 234035 (Exhibit 1C).

## **BACKGROUND**

Donlin Gold LLC proposes<sup>1</sup> to develop an open pit, hard rock gold mine (Mine) at a location 277 miles west of Anchorage, 145 miles northeast of Bethel, and 10 miles north of the village of Crooked Creek. The Mine, and in particular the COA, will be located on private lands owned by the Calista Corporation (CC), The Kuskokwim Corporation (TKC), and Lyman Revocable Living Trust.

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 create an alternative access route, as well as to close and realign these easements. Donlin's associated infrastructure land use authorizations have been mentioned here for completeness only.

Under consideration in this PD is Donlin's request to temporarily close the public's legal access rights in the COA to facilitate industrial mining activities. In order to do such, the following is proposed, and is further evaluated in the Discussion section of this PD. Donlin's request is concurrent with a separate easement vacation petition (EV 3-224); that PD has been cited and referred to as appropriate throughout this PD.

The overarching proposed project includes:

### *Easement Creation and Donated Easement 1*

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<sup>1</sup> 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.

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

Donlin will be required to enter into an agreement for the entirety of APAR that will outline provisions to protect the public's safety and provide information regarding public access routes during Mine Life.

#### *Easement Vacation and Donated Easements 2-6*

Donlin has petitioned to vacate (EV 3-224) applicable easements on private lands within and near the COA (Exhibit 1B).

The vacation of the COA public access easements requires equal or better alternative replacements be donated before vacation may occur. Therefore, new public access easements across private lands are proposed to be donated to DMLW before Mine Life; these would take the form of DE 1-6. Refer to easement vacation preliminary decision EV 3-244.

#### *Easement Realignment*

Donlin requests the realignment of a segment of RST 76 (ADL 234035), which is located on the east side of the COA and provides public access to public lands. A segment of RST 76 runs along the COA boundary and crosses in and out. Therefore, Donlin proposes to realign RST 76 just outside the COA onto State lands, to facilitate the Mine operations.

#### *Easement Closure and Post-Mine Life Easement Opening*

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

Donlin will be required 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 a subsequent agreement (Exhibit 1D).

#### *Associated Agreements*

Donlin and the landowners will be required to enter an agreement that 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 after mine reclamation.

Donlin will be required to enter into a separate agreement. Under this agreement, during Mine Life, Donlin will be required to: (1) improve and maintain APAR for public use; (2) manage public access during the closure of the COA, including blocking access to the COA; (3) manage public safety where the easement crosses private roads, nears material sites, or other industrial activities; and (4) notify the public of APAR and COA closure. Once the Mine has been reclaimed, the DEs constructed, surveyed, and recorded, and upon written agreement from SCRO, Donlin will be released from these obligations.

## **RECOMMENDED ACTION**

The SCRO is considering the following provisions with regard to Donlin's request:

### Easement Creation: ADL 236624

- Width: Minimum 100 feet, but also including any areas within slope lines that exceed this minimum width.
- Length: Approximately 24 miles, to be determined by DMLW-approved as-built survey.
- Acreage: Approximately 290 acres, to be determined by DMLW-approved as-built survey.
- Term: Indefinite
- Grantee: DMLW
- Type of easement: Public Access Easement
- Construction: Donlin shall clear vegetation near as practical to ground level to a minimum width of 30 feet.
- Maintenance: Donlin will enter into an agreement with SCRO to maintain the route for public use and manage public safety. Once the Mine has been reclaimed, Donlin may be released from the agreement and management returns to DMLW. SCRO is not responsible for the maintenance of authorized improvements or liable for injuries or damages related to those improvements. No action or non-action is to be construed as an assumption of responsibility.

### Easement Realignment: ADL 234035

The R.S. 2477 route serialized as RST 76, is located on the east side of the COA and provides public access to public lands. A portion of RST 76 crosses in and out of the COA near its boundary line, therefore, this PD proposes to realign RST 76 just outside the COA to facilitate the Mine operations. Donlin will construct a portion of RST 76 outside the COA as a segment of APAR, prior to the closure of easements within the COA. See Easement Creation section above for maintenance of this segment of RST 76.

### Easement Closure: ADL 234025

- Easements to be closed: DEs 2-6 and applicable portions of FAS 231
- Length of easements to be closed: Approximately 50 miles
- Term: From the start of physical Mine construction activities until the approved location and improvements for DE 2-6 and FAS 231 post Mine Life.

- Access Control: Donlin shall enter into an agreement with SCRO.
- Alternate Route: Approval of closure is contingent on the completion of APAR.

## **SCOPE OF DECISION**

The scope of this decision is limited to the determination of whether:

- *ADL 236624*: To create a public access easement around the COA,
- *ADL 234035*: To realign a portion of RST 76,
- *ADL 234025*: To close DE 2-6 and applicable portions of FAS 231 located within the COA during Mine Life, and

All other aspects of the project are outside the scope of this decision.

## **STATUTORY AND REGULATORY AUTHORITY**

- The creation of the public access easements around the COA and the management of all easements discussed herein is pursuant to AS 38.05.850 and 11 AAC 51.100(a).
- Under 11 AAC 51.065(k), a realignment may occur “to reroute the right-of-way elsewhere on that owner’s land to an alignment that less adversely affects the landowner’s interests.” 11 AAC 51.065(k). The realignment will be approved if:
  - (1) The realignment provides access reasonably comparable to the original, with access being reasonably comparable if it is equal or better access and the access is between the same destinations as it did before the realignment,
  - (2) The realignment does not affect land in other ownership, and
  - (3) The realignment connects to the original route where it enters and exits the landowner’s land.
- Because ADL 234035 reroutes the right-of-way off of the owners’ land and re-locates the entire R.S. 2477 on to state land and not private land, an argument could be made that 11 AAC 51.065(k) does not apply. However, such a distinction does not matter here: this decision’s realignment analysis of this R.S. 2477 is consistent with 11 AAC 51.065(k).
- The closure of DE 2-6 and portions of FAS 231 is pursuant to AS 38.05.035(a)(2) & (a)(7) and AS 38.04.058. An easement may be closed if the closure is necessary to protect public safety or property. The restrictions of the easements here must be “narrowly tailored to achieve the protection of public safety and property while preserving access to the maximum extent practicable” and this written decision must identify “how the restriction will protect public safety and public or private property.”

## **ADMINISTRATIVE RECORD**

The administrative record for the proposed action consists of the Constitution of the State of Alaska, the Alaska Land Act as amended, applicable statutes and regulations referenced herein, the 1988 Kuskokwim Area Plan and the Amendment and Land Classification Order No. SC-88-001A21, other classification references described herein, and the casefile for the application(s) serialized by DNR as ADL 236624, ADL 234025, and ADL 234035.

## LOCATION AND TITLE INTEREST

### Geographic

The proposed actions are located north of the community of Crooked Creek in the central Kuskokwim watershed.

### Borough

The proposed actions occur within the Unorganized Borough.

### State Land Title and Interests

The State of Alaska holds title to the lands where ADL 236624 and ADL 234035 are proposed. Specifically:

- Applicable portions of Township 24 North, Range 48 West, Seward Meridian, per Tentative Approval Number 2007-0131. The associated DNR selection casefile is GS 5964. Specifically:
  - Sections, 21, 22, 26, 27, 28, 29, 30, 31, 32, and 35
- Applicable portions of Township 24 North, Range 49 West, Seward Meridian, per Tentative Approval Number 2007-0136. The associated DNR selection casefile is GS 5965. Specifically:
  - Sections 22, 25, 26, 27, 28, 29, and 32
- Applicable portions of Township 23 North, Range 48 West, Seward Meridian, per Patent 50-2008-0112. The associated DNR selection casefile is GS 6435. Specifically:
  - Section 2 and 11
- Applicable portions of Township 23 North, Range 49 West, Seward Meridian, per Patent 50-2019-0097. The associated DNR selection casefile is GS 6436. Specifically:
  - Sections 4, 5, 7, 8, 17, and 18
- Applicable portions of Township 23 North, Range 50 West, Seward Meridian, per Patent 50-2009-0171. The associated DNR selection casefile is GS 6437. Specifically:
  - Sections, 13, 23, 24, 26, and 35
- Applicable portions of Township 22 North, Range 50 West, Seward Meridian, per Tentative Approval Number 2008-0087. Specifically:
  - Section 2

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.

The Alaska State Legislature has determined that 100-foot wide R.S. 2477s easements exist within the parcels described herein pursuant to Section 8 of the 1866 Mining Act (also referenced as Section 2477 of the Revised Statutes and 43 U.S.C. §932) and AS 19.30.400.

Authorizations may cross navigable waters within State land. Lands on one or both sides of these waters at these locations are managed by DMLW; therefore, ownership is noted as having inured to the State through the acquisition of the adjoining uplands. However, the State of Alaska continues to hold title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including under any navigable waters in the sections referenced above, on the basis of the Equal Footing Doctrine, the Submerged Lands Act of 1953, and AS 38.04.062 irrespective of how ownership is reported herein.

### **THIRD PARTY INTERESTS**

There are 67 State mining claims present within the boundaries of ADL 236624. These claims are listed in Table 3, and records indicate that Donlin Gold LLC holds all of them.

### **CLASSIFICATION & PLANNING**

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*).

According to KAP, the Areawide Land Management Policies are to promote and allow public access to public lands and resources. (*Chapter 3-92, KAP*). Public recreation is an important secondary goal. (*Chapter 3-92, KAP*). The creation of ADL 236624 and the realignment of RST 76 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**

An agency review of Donlin’s application was initially conducted between February 4 and 25, 2019. During that time, DMLW solicited agency comments. After Donlin revised their application, another agency review was conducted between March 7, 2022 and April 7, 2022. DMLW then solicited updated agency comments. The following government agencies were consulted:

- Alaska Department of Fish & Game, Habitat Division, Access Defense Program
- Alaska Department of Environmental Conservation (DEC), Division of Water (DOW), Wastewater Discharge Authorization and Alaska Pollutant Discharge Elimination System Program
- DEC, DOW, Mining
- DEC, Division of Environmental Health (DEH), Solid Waste Program

- DEC, DEH, Drinking Water Program
- DEC, Division of Spill Prevention and Response, Contaminated Sites Program
- DNR, Division of Agriculture
- DNR, DMLW, Land Conveyance Section
- DNR, DMLW, Southcentral Regional Land Office
- DNR, DMLW, Realty Services Section
- DNR, DMLW, Statewide Abatement of Impaired Land Section
- DNR, DMLW, Public Access Assertion and Defense Unit (PAAD)
- DNR, DMLW, Resource Assessment & Development Section (RADS)
- DNR, DMLW, Survey Section
- DNR, DMLW, Water Section
- DNR, DMLW, Mining Section
- DNR, Division of Parks & Outdoor Recreation (DPOR), Park Permitting
- DNR, DPOR, Office of History and Archaeology
- DNR, Division of Oil & Gas (DOG), Permitting
- DNR, DOG, State Pipeline Coordinator's Section (SPCS)
- Mental Health Land Trust Office
- Alaska Department of Transportation & Public Facilities (DOT&PF)
- Alaska Department of Commerce, Community, and Economic Development, Community and Regional Affairs

In addition, the following federal agencies were consulted:

- National Oceanic and Atmospheric Administration/National Marine Fisheries Service
- National Park Service
- United States (U.S.) Army Corps of Engineers
- U.S. Coast Guard
- Environmental Protection Agency
- U.S. Fish and Wildlife Service (USFWS)
- Bureau of Land Management (BLM)

#### Agency Comments and Response

A total of six comments were received during the Agency Review Period.

**Comment:** On April 2, 2022, DOT&PF confirmed the non-objection previously provided on December 10th, 2015, which was submitted prior to Donlin's updated application. The DOT&PF's comment is as follows: *"DOT&PF does not object to 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 ANSCA 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:** SCRO acknowledges the comment. Comments submitted in 2015 were pursuant to a previous development plan; the intent remains to provide alternate access around the COA during Mine Life and provide protected long-term access through and within the COA after Mine Life, although the specific mechanisms are different. Donlin’s updated applications proposes that RSTs in the COA are to be vacated and replaced by DEs granted to the DMLW by the underlying landowners. The FAS 231 and DEs within the COA are to be closed and public access is to be re-directed along APAR, during Mine Life. APAR will remain indefinitely. The FAS 231 and DEs 2-6 are to be established post mine reclamation and opened for public access once public safety concerns are no longer present. RST 76 is to be permanently realigned.

The DOT&PF’s specific comments are addressed as follows: In Donlin’s updated application, the applicable RSTs are currently proposed for vacation, not temporary relocation. Comments regarding the majority of actions on the impacted RSTs are outside the scope of this decision. Please refer to the PD associated with Donlin’s easement vacation petition (EV 3-244), which is being public noticed concurrently with this PD. Additionally:

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. A pre-mine survey of FAS 231 or DE 2-6 is not necessary as any survey of the easements would be rendered irrelevant by the development of the Mine.
2. In addition, a pre- and post- construction survey of the proposed realignment of unplatted R.S. 2477s is not required under 11 AAC 51.065(k) however, to facilitate management and public access, a DNR-approved survey will be required for the completion of ADL 234035 post-construction.
3. 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.
4. As per Donlin’s January 2022 application, neither FAS 231 nor the majority of RSTs will be relocated. ADL 234035 is outlined in the Discussion section of this PD.
5. In addition, APAR will provide access around the COA, during Mine Life. APAR is outlined in the Discussion section of this PD. APAR will remain after the COA is reopened.
6. The Donlin Gold Project Public Easement Plan is being made subject to public comment through this PD.

**Comment:** On May 6, 2022, DOW issued a comment stating “DEC/Water Permitting coordinates without comment for the proposed easement plan”.

**Response:** SCRO acknowledges the comment.

**Comment:** On April 7, 2022, SPCS sent the following comment “The State Pipeline Coordinator’s Section (SPCS) reviewed the Donlin Gold, LLC, Creation of Public Access Easement, ADL 236624, RST 76 Realignment and has no concerns. There are no AS 38.35 pipeline rights-of-way, applications, or AS 38.35 proposed pipelines in vicinity”

**Response:** SCRO acknowledges the comment.

**Comment:** On April 7, 2022, USFWS sent a comment asserting “jurisdiction over trust resources that may occur in the proposed area. These include species protected under the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, and the Fish and Wildlife Coordination Act. The activities listed above [the easement application] could impact migratory birds, bald eagles, fish, and their respective habitats. Please consider including the following information and recommendations to avoid and minimize effects related to these resources in the easement, where possible.” USFWS recommendations have been summarized below:

- Eagle and Migratory Birds: Time vegetation clearance to protect nesting birds and distance buffers to protect eagles and their nests by:
  - Conducting nest surveys in advance of the project and before “leaf out” (April 15th to May 15th)
  - If possible, complete work outside March 1 to August 31 for eagles and outside May through mid-July for all migratory birds
  - If work is conducted during nesting season and is within half a mile of an eagle nest contact USFWS
  - If you discover an eagle nest and need an eagle nest disturbance permit, contact USFWS
- Wetlands: Mitigate impacts to wetlands by considering the following management practices:
  - Reduce the project footprint to the maximum extent and conduct related activities in areas already disturbed
  - If impacts are unavoidable, restore wetlands to a pre-existing condition
  - Install silt fencing around wetlands near construction to avoid water quality degradation and to protect the respiratory gill function of fish
  - Prevent fuel and hazardous substance spills by the correct maintenance and operation of equipment, by the use of the correct storage and maintenance areas, and by the use of surface liners, drip pans and/or other suitable containment mechanisms
- Invasive Species:

- Ensure construction equipment areas on site are clean of invasive species and clean equipment before it arrives or leaves the project site
- Use erosion control measures and materials that are free of weeds and clean any wetland matting before it is transported to and removed from the site
- Re-vegetate bare soils with native seeds as soon as feasibly possible
- Stabilize disturbed soil using appropriate erosion and sediment control procedures using weed free gravel and with native plants and seed mixes. Riparian restoration with native shrubs and forbs can have added conservation benefits for pollinators

In addition, USFWS submitted Chapter 5: Impact Avoidance, Minimization, and Mitigation of the Donlin Gold Project Final Environmental Impact Statement and the USFWS Alaska Fish Passage Program Culvert Design Guidelines for Ecological Function.

**Response:** SCRO acknowledges the comment and has forwarded USFWS’s recommendations to Donlin. DMLW’s standard stipulations regarding fuel and hazardous substances will be included in the Entry Authorization (EA) and final easement document, as will stipulations requiring the applicant comply with all other federal, state, and local laws.

**Comment:** On April 7, 2022, RADS issued the following comment *“Taking the...area plan and associated amendments into account, the proposed Donlin Mine Public Access Project (ADL 236624) will provide alternative easement corridors around the COA that will protect the public safety and provide continued access to recreation in the area. This is a viable application that should move forward.”*

**Response:** SCRO acknowledges the comment.

**Comment:** On April 7, 2022, PAAD issued a statement clarifying comments in the Development Plan (Exhibit 2), which includes:

*“The Plan noted that “[t]he intent of the grant was to protect the access rights of miners in the early 1800s...” Revised Statute 2477 (R.S. 2477) was originally found in section 8 of the Mining Law of 1866, but the broad wording of the law does not limit the type of right-of-way to which it applied. R.S. 2477 scope in Alaska extends further than protecting access rights of miners to include homestead access, rural mail routes, dog-sled routes, and other transportation routes.*

*The Plan indicated that the Department of Transportation and Public Facilities (DOT&PF) and the Department of Natural Resources (DNR) “have joint jurisdictional authority for RS-2477s”. The DNR has management authority over the use of any R.S. 2477 right-of-way that is not on the Alaska highway system, per 11 AAC 51.100. If an R.S. 2477 will be transferred to the DOT&PF or a local government for management purposes, the commissioner of DNR and the commissioner of DOT&PF by agreement, will make the determination.*

*The Plan claims that “Asserted RS2477 claims must be perfected by a court of competent jurisdiction to be valid on federal lands.” This statement is incorrect; asserted R.S. 2477 claims do not require perfection by a court to be valid. R.S. 2477 was self-executing; a right-of-way came into existence automatically when a public highway was established across public lands in accordance with the law of the state. Standard Ventures, Inc., v. Arizona, 499 F.2d 248, 250 (9th Cir. 1974). This context of “highways” refers to foot trails, pack trails, sled dog trails, crudely built wagon roads, and other corridors for transportation.*

*Alaska Statute 19.59.001(8) defines a highway to include “a highway (whether included in primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof...”*

**Response:** SCRO acknowledges the comment and has forwarded the information to Donlin.

## **DISCUSSION**

The discussion section will examine the following:

1. Core Operating Area
2. Finding for the Proposed Closure of Easements within the COA
3. Analysis of the Alternative Public Access Route
4. Creation of the Alternative Public Access Route
5. Management of the Alternative Public Access Route
6. Requirements Pursuant to Closure of Easements within the COA
7. Term for Closure of Easements within the COA
8. Realignment of RST 76
9. Post Mine Life Opening of Donated Easements

### Core Operating Area

Donlin has defined the COA (Exhibit 1A) as the area with mine operations. Donlin has identified the following pertinent hazards within the COA:

- Industrial traffic/heavy equipment operations
- Explosive handling and planned blasting activities, including areas to capture flying rock as a result of blasting
- Potential accidental discharge of electrical detonators as a result of the unregulated use of radio transmitters
- Ancillary facilities such as hazardous materials and explosives storage facilities

### Finding for the Proposed Closure of Easements within the COA

Donlin has requested that public access easements, be closed for public safety reasons and to facilitate mine operation and reclamation. Pursuant to AS 38.04.058, DMLW may close an easement if the closure is necessary to protect public safety or property; the closure must be

“narrowly tailored to achieve the protection of public safety and property while preserving access to the maximum extent practicable” and this written decision must identify “how the restriction will protect public safety...”

Within private property, FAS 231 and the proposed DEs 2-6 function as public access corridors primarily used by members of the public; the landowners and Donlin do not need to rely on public access easements for travel within their own lands or mine operations within the COA. As such, members of the public traveling through the COA, to and from locations outside the COA, are the primary consideration when analyzing closure of these easements during Mine Life.

FAS 231 is the primary transportation route throughout this area, entering the COA from the north within the Flat Creek valley, and continuing southward to the confluence of Flat Creek and Donlin Creek which merge to form Crooked Creek. FAS 231 continues southward along Crooked Creek, exiting the COA and continuing on toward the community of Crooked Creek. DE 2, DE 3, and DE 6 connect directly to FAS 231 providing access from State-managed lands to the west of the COA and BLM-managed lands to the east, while DE 4 provides inter-easement connection from within the COA to State-managed lands to the north, and DE 5 provides inter-easement connections within the COA. Additionally, while DE 6 provides access to BLM lands east of the COA, BLM is procuring alternative access, approximately 0.5 miles south of the COA from FAS 231 to BLM managed lands, to ensure access to these lands as a replacement for EIN 10, and have determined this level of access is sufficient during Mine Life.

During Mine Life, portions of FAS 231, DE 2, and DE 6 will be directly adjacent to, and in some cases coincident with, mining infrastructure including roads, ancillary facilities such as fuel storage and the waste rock facility, safety buffer locations for blasting, as well as the anticipated pit location. There are safety risks to members of the public should they utilize these routes during Mine Life (blasting, flying rock, industrial traffic conflicts, hazardous materials, explosives storage facilities, etc.), as well as to mine employees (industrial traffic conflicts, potential radio interference/discharge of detonators, etc.). Reasonable mitigation of these hazards can only be achieved by a physical separation of members of the public and mine operations; closure of the these easements within the COA during mine life while providing alternative access routes around the COA is the practical and feasible solution.

DE 3-5 do not have direct conflicts with currently identified mine infrastructure and related activities, however, they collectively provide access from a single point along FAS 231, at the intersection of FAS 231 and DE 3. In consideration of limiting the closure of FAS 231 to that portion between the intersection of FAS 231 and DE 3, and the southern boundary of the COA, which would allow access to and along DE 3-5, the following concerns have been considered:

- DE 3-5 are not currently improved, DNR is concerned that users would leave the easements and travel south and east towards active mine development.

- It is reasonable to presume that users intending to travel through the area may ignore the closure notifications at the intersection FAS 231 and APAR, at the location where FAS 231 crosses the northern boundary of the COA, and the northern terminus of DE 4. Upon encountering a complete route closure at the intersection of FAS 231 and DE 3, it is also reasonable to presume that users may continue south in violation of the closure on FAS 231 or in trespass on private lands within the valley, rather than return 6 miles north to the intersection of FAS 231 and APAR.

In either of these circumstances, members of the public as well as mine employees could be subject to the safety hazards described above. If these were the only routes available to get from point to point (i.e. Flat to Crooked Creek), it would not be sufficient to close these routes. However, APAR will provide reasonably comparable access to all destinations. Given that reasonably comparable access is provided to all destinations and there are risks associated with allowing continued access to and along DE 3-5 during mine life, SCRO believes closure is warranted for FAS 231 and DE 2-6 within the COA while continuing to allow for meaningful access in the area via APAR.

#### *Analysis of the Alternative Public Access Route*

When contemplating easement closures as described above, these closures must be narrowly tailored and balance the risks to public safety and property of keeping these easements open while also ensuring continued public access. APAR was designed to both accommodate reasonably comparable access to all destinations during Mine Life, as well as to enhance access when easements are re-opened within the COA. Easements within the COA are currently not surveyed. The terrain of the FAS 231 is primarily situated in lowlands; significant portions of this route through the COA are underlain by saturated soils and are difficult to traverse during the summer season. The R.S. 2477 easements within the COA and subsequently DE 2-6 are largely ridge top routes. Easements within the COA are unimproved, although some portions have been cleared of vegetation to varying widths. APAR is proposed to be located on and follow ridgelines as an all-season route and sited on a drier, year-round alignment than the FAS 231, and is more in character with the existing R.S. 2477 routes in the COA.

The overall development level of the existing easements appears to be minimal, and public use is likely limited to infrequent foot, ATV, snowmachine, and off-highway freight traffic use between the communities of Crooked Creek and Iditarod. DMLW does not anticipate a change in these uses during Mine Life. As a temporary replacement for public access easements within the COA, the proposed APAR will preserve access to the maximum extent practicable and will account for all likely transportation methods currently used to travel within the COA. The easement proposed to be created as ADL 236624 will be a 100-foot-wide public access easement approximately 24 miles in length across State-owned, DMLW-managed land and will be developed to a level to allow for, but not limited to, pedestrian, ATV, snowmachine, off-highway freight traffic, and dogsled traffic. This easement will connect to FAS 231 via DE 1, as well as RST 76 to create a north-south and east-west travel route around the COA.

The use patterns of existing easements within the COA may be accommodated during closure by an alternative route that is longer than the existing easements, so long as the alternate route is improved to a level comparable to existing easements. Donlin proposes to locate APAR on ridgelines across State land to the west and north of the COA to divert public travel onto a safe route. Donlin selected the proposed route for APAR based on the suitability of the terrain and evidence of previous use on-the-ground. Donlin proposes to maintain an appropriate level of development during the life of the mine, including clearing vegetation as near as practical to ground level along the length of APAR to a width of 30 feet. Prior to issuance of an EA, Donlin will be required to enter into an agreement to this effect.

APAR provides an appropriate route to ensure continued access for anticipated uses during Mine Life and will establish a fixed and constructed public access easement post Mine Life. This route would be improved and located on land more suitable for all-season use, and entirely on State land or within surveyed easements on non-state land where the location is legally established and acknowledged by both DMLW and private landowners.

#### *Creation of the Alternative Public Access Route*

As stated above, APAR is necessary to accommodate the public's right to access public lands surrounding the COA. APAR is comprised of three segments, ADL 236624, DE 1, and a portion of RST 76.

In order to complete APAR, DE 1, a segment of the route which crosses private lands, must be accepted by DMLW. The proposed route for DE 1 (Exhibit 1B & 1C) connects FAS 231 to ADL 236624 and allows the public to cross TKC and CC land to access public land and circumnavigate the COA.

APAR may be collocated with several State-owned, DMLW-managed R.S. 2477 easements, specifically RST 545 and RST 554. In recognition of the R.S. 2477s as a pre-existing public access dedication, the estimated acreage encompassed by the collocated R.S. 2477s will be removed from the total acreage of ADL 236624 for the purpose of calculating the interim, and land use fees.

If authorized, the easement considered herein will be granted for an indefinite term from the effective date of the Final Finding and Decision as this easement will continue to enhance access in the area after the COA is opened to public access.

The following must occur before an easement can be granted for ADL 236624 and the realignment of RST 76 can be authorized:

- Donlin must improve APAR,
- Donlin must survey APAR, in accord with DMLW Survey Section issued survey instructions, and
- Survey for APAR must be approved by the DMLW Survey Section.

### Management of the Alternative Public Access Route

To ensure safe passage, Donlin will be required to maintain and operate APAR during Mine Life. DMLW will hold title to APAR in trust for the public. SCRO will continue to operate as the authorizing agency for related or interconnected easement developments on State-owned DMLW-managed public land, and as an arbitrator for public concerns. The transfer of maintenance and operations responsibilities to Donlin will provide the route with unified management, and a single point of contact to provide the public with up-to-date information on APAR closures in the event of an emergency or maintenance operations. Donlin will be required to enter into an agreement for the management of APAR prior to the closure of donated easements 2-6 within the COA.

Donlin's responsibilities will be outlined in an agreement to include, but will not be limited to:

- Brushing vegetation to ensure APAR is functional for current and foreseeable use,
- Repairing damage to APAR that would preclude or restrict public use,
- Posting signs informing the public of easement closure in the COA, detailing APAR route and providing contact details for Donlin site control,
- Installing traffic control measures such as crossing areas, posting warning signs, and installing speed limits where APAR is collocated with, or crosses, the Donlin Jungjuk Road (ADL 232346), or intersects with other industrial activities and/or infrastructure.

### Requirements Pursuant to Closure of Easements within the COA

Regarding the above closure finding (ADL 234025), Donlin will be required to post information signs of the closure in a conspicuous place near the easement and, at SCRO's discretion, install a barrier or obstruction to block public access. Donlin will also be responsible for posting signs indicating the location of alternative routes. These responsibilities will be assigned to Donlin during Mine Life, along with management of APAR. Donlin's responsibilities will be outlined in an agreement to include, but will not be limited to:

- Installing traffic control measures and/or physical barriers required to restrict access at the COA boundary,
- Installing signs to inform the public that the COA is closed to public access, and
- Create and make publicly available maps depicting APAR, COA, the underlying landowners, and providing contact information for Donlin and SCRO.

SCRO proposes to close FAS 231 and DE 2-6 after the following deliverables are provided:

- DMLW acceptance and executions of title documents for DE 1-6,
- Title documents are recorded in the DNR Recorder's Office for DE 1-6,
- The improvements to APAR
- SCRO's approval of the agreement with Donlin to manage APAR, and
- The payment of applicable land use fees detailed below.



### Term for Closure of Easements within the COA

The easements within the COA will be closed for a term defined by the Mine Life. The closure of FAS 231 and DE 2-6 will be based on the improvements to, and survey of APAR. ADL 234025 will be authorized by SCRO in writing.

### Realignment of RST 76/ADL 234035

The R.S. 2477 serialized by the DNR as RST 76, also known as the Flat-George Town Trail, originates approximately eight (8) miles south of Flat, Alaska, near the mouth of Prince Creek on Bonanza Creek. It continues south to George Town and is approximately 65 miles in length. The RST 76 passes to the east of the COA. Approximately four (4) miles of RST 76 connects to the proposed creation of ADL 236624 and RST 584, providing public access to BLM-managed land on the east side of the COA. As such, RST 76 is a crucial part of APAR. Approximately 2,250 feet of RST 76 is located within the COA, on CC-owned lands. With concerns over public safety and closure of public access within the COA, access to public lands on the eastern side of the COA will need to be preserved. Unlike other R.S. 2477s within the COA, RST 76 is entirely located near the boundary of the COA; it crosses the COA boundary and travels approximately 650 feet west into the COA, travels approximately 2,250 feet, and then exits the COA. As such, SCRO proposes to realign this portion of RST 76, serialized as ADL 234035, to outside the COA to ensure continued public access both during and after Mine Life (Exhibit 1B & 1C).

Under 11 AAC 51.065(k), an owner of land may request an RST be realigned “to reroute the right-of-way elsewhere on that owner’s land to an alignment that less adversely affects the landowner’s interests.” Because this realignment reroutes the right-of-way off of the owners’ land and re-locates the affected portion of the R.S. 2477 on to state land and not private land, an argument could be made that 11 AAC 51.065(k) does not apply.

Therefore, SCRO has determined that the relocation is a discretionary action as opposed to a requirement if it meets the criteria specified in (k), and has looked to 11 AAC 51.065(k) to determine what criteria should be incorporated into its analysis. SCRO has concluded that; any replacement access must be reasonably comparable as described in 11 AAC 51.065(k)(1), the realignment must be located on land with the permission of the landowner(s), and the realignment must provide for continuity of access along the route, with connection points at the beginning and end of the realigned portions, but not at the entry and exit point of each landowner.

For the realignment of RST 76, that means the route must be reasonably comparable to the original location of the portion of RST 76 within the COA, must be located on currently DMLW-managed land with permission of all third party interest holders, and must connect to the original location of RST 76 at the beginning and end points of the realignment.

Reasonably comparable access is determined by examining the proposed realignment routes length, width, terrain, improvements, and overall usability.

The RST 76 is an open ridgetop route that is not fixed by a DNR-approved survey, as such the specific route taken by the public may change each year depending on weather conditions creating varied lengths, conditions, and grades of terrain. Field inspections conducted by SCRO on September 3, 2014, and September 13, 2016, describe applicable portions of RST 76 as having impacts of a well-defined footpath, however there is no evidence or record of an authorization to improve this RST for public access purposes. The route may also be used by all-terrain vehicles, snow machines, and dog sleds, although there is no physical evidence. Donlin has presented satellite imagery that indicates that the alternative route outside the COA also shows signs of pedestrian use. All discussions of length, slope, improvements, and terrain are approximations based on desktop analysis, except where explicitly stated. Given the area's heavy mineralization and remote nature, reasonably foreseeable uses for analysis are limited to mineral development uses, off highway travel (such as mushing, hiking, snowmachines, ATVs, etc. for recreation and non-recreation purposes), and potentially off-road freighting operations.

The current length of RST 76 within Section 10 of Township 23 North, Range 48 West, Seward Meridian is approximately 2,250 feet. The proposed route outside the COA and within Section 11 of Township 23 North, Range 48 West, Seward Meridian is approximately 2,425 feet, which equates to an increase of 175 feet, out of a total length of 65 miles, which is considered to be a de minimis change.

Both routes cross mountain terrain at different elevations. The portion of RST 76 considered under ADL 234035 currently runs along an exposed ridge top and vegetation is minimal. A desktop analysis shows the proposed realignment route traverses a more gradual decent through scrub vegetation. Slopes are comparable. Donlin will be required to clear vegetation and clear and grade the new route to make it reasonably comparable.

Desktop analysis indicates that ADL 234035 will accommodate existing patterns of use once vegetation has been cleared and grading has been completed. Donlin has will be required to clear, grade, and survey the proposed realignment route under an EA. The realignment will be finalized upon acceptance of a Notice of R.S. 2477 Administrative Realignment. Further, ADL 234025 will not be approved prior to the approval of the ADL 234035.

This reroute will connect with the existing location of RST 76 at both ends of the realigned portion. The proposed reroute is located atop mining claims, a third party interest, which are held by the applicant.

Given the above, the realigned location of RST 76 as proposed under ADL 234035 is reasonably comparable, is located on DMLW-managed lands, with concurrence from the third party interest holders, and provides for continuity of access along the route. Furthermore, SCRO proposes that it is in the State's interest to authorize the realignment as it will allow for compliance with Donlin's existing air quality permit during mine life, and result in a surveyed and constructed portion of this route post mine life.

### Post Mine Life Opening of Donated Easements

Once the Mine has come to the end of its economically viable life and the site has been reclaimed to the satisfaction of the DMLW Mining Section, Donlin will improve and locate DE 2-6 and FAS 231 in the COA. Improvement will be required because post Mine Life, underlying lands will have been greatly modified by mining activities. Donlin proposed an easement corridor width of two mile to allow for the location of DEs 2-6 and FAS 231 around different industrial sites and across altered terrain. The SCRO acknowledges the importance of these corridors but has amended the request to reduce the corridor width to one (1) mile; one half (0.5) mile either side of the easement centerline (Exhibit 1B & 1D). Examination of the DE corridors is covered in the proposed easement vacation action (EV 3-244.) Once the DNR-approved survey is recorded, SCRO will notify Donlin that the COA may be opened to public access and at that time Donlin shall:

- Remove any obstructions on FAS 231 and DE 2-6, and
- Place signage at appropriate locations that show FAS 231 and DE 2-6 are open and provide a map of the easements.

At this time, Donlin would be expected to end the agreement for the management of APAR, management would then return to SCRO.

Information from the applicant does not clearly indicate there will be any impact to the current location of FAS 231, however in the event there is an impact, improvements shall occur as described for DEs 2-6.

### **FEES**

The following fees are applicable to this request which may be adjusted if regulation(s) pertaining to the fee(s) change during the term of the EA and/or easement, and the closure of easements, and will be subject to non-sufficient funds and late payment penalty fees.

### Creation of APAR, specifically ADL 236624

- Donlin shall pay an annual interim land use fee of \$120.00 per acre rounded up to the nearest whole acre, with a \$240.00 minimum, per 11 AAC 05.070(d)(2)(I), for the term of the EA. The estimated annual fee for 165 acres while in EA status will be \$19,680.00 per year. The current estimated annual fee is based on the acreage of the newly dedicated public easement, not the total acreage of ADL 236624. Portions of APAR are already dedicated to public use as recognized R.S. 2477; these portions are not subject to annual interim land use fees. This fee is charged concurrently with any other land use fees that may be described herein.
- Donlin shall pay a one-time fee, for issuance of a public access easement, of \$120.00 per acre rounded up to the nearest whole acre, per 11 AAC 05.070(d)(2)(B). The proposed easement will be 165 acres in area, for a one-time fee of \$19,680.00. The acreage reference

used for the calculation of fees excludes the estimated acreage of the R.S. 2477 collocated with the proposed easement.

Closure of Donated Easements, ADL 234025

- Donlin shall pay an annual closure fee of \$600.00 per mile, rounded up to the nearest whole mile, for closure of a public access easement, per 11 AAC 05.070(d)(2)(E). The estimated annual fee for the proposed 50-mile easement closure is \$24,600.00 per year.

Additionally, Donlin shall pay applicable document recording fees prior to DMLW's execution and recordation of any associated recordable document.

**PERFORMANCE GUARANTY**

In accordance with AS 38.05.860, a performance guaranty (PG) is intended to incentivize compliance with the terms and conditions of the EA and easement for the creation of APAR, including the creation of ADL 236624, ADL 234035, and improvements to DE 1, and the construction and survey of DE 2-6 to include the subsequent location of easements. In lieu of a PG, Donlin may elect to provide such surety through a Financial Assurance Agreement (FAA). The PG or FAA funding amount represents an estimate cost should DMLW be required to locate, improve, and survey routes in the event the petitioner fails to do so.

As such, Donlin is required to submit a performance guaranty in the amount of \$205,000.00 prior to approval of the issuance of EA to ensure the completion of APAR, DE 1-6, and FAS 231 as-built surveys. This estimate is calculated using two laborers for forty, 8-hour days each at \$70.00 per hour, for a total of \$45,000.00, plus the \$62,000.00 estimated for the completed survey and improvements, for a sum total in today's dollars of \$107,000.00. Compounding this \$107,000.00 by an estimate of simple interest of 3% annually for 20 years for a total of \$195,000.00. An amount of \$10,000.00 is added to cover other and unforeseen expenses.

This PG or FAA will be subject to release upon the acceptance of a DMLW-approved as-built survey and the fulfillment of all conditions of the survey instructions. The PG or FAA funding amounts may be adjusted to reflect updates and changes in the project, and may be reduced one time during the term of the EA by an amount up to the contracted amount to a licensed surveyor for completion of an as-built survey. Donlin may be required to provide an additional funds into the PG or FAA, if DMLW determines there is additional risk to the State.

Should development of the Mine not take place in 10 years from the execution of this FFD, and this timeframe is not extended, PG or FAA funds may be used to locate and improve DE 2-6 for public use.

**INSURANCE**

Donlin will be required to submit proof of insurance in an amount the insurance company determines necessary to protect both the State and the applicant from risks associated with the

creation of APAR, including the creation of ADL 236624, ADL 234035, improvements to DE 1, and donation of DE 2-6 to include the subsequent improvements and location of easements post Mine Life. Donlin will be responsible for maintaining the necessary insurance during the term of the easement. The insurance may be adjusted to reflect updates and changes in the associated project and the applicant may be required to furnish additional insurance if DMLW determines there is additional risk to the State. A certificate of insurance listing the State of Alaska, Department of Natural Resources as an additional insured on the policy, or other insurance acceptable to the State, must be submitted to DMLW prior to entry on state land and must be maintained throughout the term of the easement.

## **SURVEY**

A DMLW-approved as-built survey is required to determine the proper location and acreage of APAR on State-owned, DMLW-managed lands, including the creation of ADL 236624, ADL 234035, and improvements to DE 1. Donlin will be required to request survey instructions prior to the issuance of the EA. The survey must be produced in accordance with survey instructions provided by the DMLW Survey Section and stamped by a Professional Land Surveyor registered in the state of Alaska. A final easement will not be issued until the as-built survey has been approved by DMLW. Donlin is required to submit a preliminary draft as-built survey a minimum of two years prior to the expiration of the EA to allow adequate time for DMLW's review and approval of a final as-built survey. In addition, the following should be noted at the time survey instructions are issued to the applicant:

- The survey of ADL 236624 will not fix the location of any R.S. 2477, including, but not limited to, RST 545, RST 554, and RST 1475.
- The survey for ADL 234035 will only fix those portions of RST 76 that are realigned onto State land and those portions that connect ADL 236624 to the realigned portions of RST 76.
- Surveys for the authorization of ADL 236624 and the proposed realignment adjudicated under ADL 234035 may be combined on the same survey.

Additionally, a DMLW-approved as-built survey is required for the opening of DE 2-6 and FAS 231. The survey must be produced in accordance with survey instructions provided by the DMLW Survey Section and stamped by a Professional Land Surveyor registered in the state of Alaska. Notification of opening the COA will not issued until the as-built survey(s) has been approved by DMLW.

## **ENTRY AUTHORIZATION**

The EA is an interim authorization issued when a survey is necessary prior to easement issuance. An EA shall be issued for a term ending ten years from the effective date of this decision for the purpose of constructing, surveying, operating, and maintaining the infrastructure considered herein prior to DMLW's issuance of a public access easement. An extension of the EA may be granted at the written request of Donlin if granting the extension is deemed appropriate by DMLW. Any

extensions will not affect the EA’s terms. In requesting an extension, Donlin must contact DMLW and certify there have been no changes to the approved development plan. The extension request may be subject to applicable fees.

The EA will not be granted until the following deliverables have been provided to DMLW:

- First year payment of interim land use fees,
- Evidence of having made request for survey instructions to the DMLW Survey Section,
- Proof of insurance, and
- The PG or FAA funding in the amount of \$205,000.00 as outlined above.

**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 August 15, 2022 for a 45-day public comment period.

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.

**Written comments about this project must be received no later than  
August 15, 2022 to be considered.**

To submit comments, please choose one of the following methods:

Postal: Department of Natural Resources  
Division of Mining, Land and Water  
Southcentral Regional Land Office  
ATTN: *Stuart Greenfield*  
550 West 7<sup>th</sup> Avenue, Suite 900C  
Anchorage, AK 99501-3577  
Email: [dnr.scro.donlin@alaska.gov](mailto:dnr.scro.donlin@alaska.gov)

Fax: (907) 269-8913

Notice of this Decision is being conducted concurrently with EV 3-244, the Easement Vacation Decision. Pursuant to 11 AAC 53.730, where the Department is also the platting authority as it is in this location, there is a public hearing required for the Platting action. State law and regulations do not require a public hearing for this decision. During the public hearing on EV 3-224, if comments are made outside the scope of EV 3-224 and that pertain to this decision, DMLW staff will direct the commenter to submit comments in writing as to this decision.

**PROPOSAL AND RECOMMENDATION FOR CLOSURE, REALIGNMENT, AND CREATION OF PUBLIC ACCESS EASEMENTS**

DMLW 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. SCRO considered three criteria to determine if this project provided the best interest to the State and the development and enjoyment of its natural resources. The criteria include direct economic benefit to the State, indirect economic benefit to the State, and encouragement of the development of the State’s resources. This authorization provides a direct economic benefit to the State with the collection of fees and an indirect economic benefit through the encouragement and development of the State’s resources. It is recommended that SCRO issue:

- A public access easement serialized as ADL 236624
- The realignment of RST 76 serialized as ADL 234035
- The closure of FAS 231 and proposed donated easements 2-6 serialized as ADL 234025



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Jay Rokos, Natural Resource Manager 1  
DMLW Southcentral Regional Land Office

6/28/2022

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Date



**PRELIMINARY DECISION**

It is the determination of the Division of Mining, Land and Water that it may be in the State's interest to close FAS 231 and DEs 2-6, issue an indefinite public access easement, and to realign a portion of R.S. 2477, as described above.

Prior to authorization of the Closure of Public Easements, the applicant will be required to pay the first annual closure fee of \$24,600.00.

Prior to authorization of the entry authorization to construct, survey, operate, and maintain the proposed easement, the applicant will be required to pay the first annual interim fee of \$19,680.00, submit a performance guaranty as described above, and provide proof of liability insurance prior to the authorization of said EA.

This Preliminary Decision shall now proceed to public notice.

*Samantha Carroll*  
\_\_\_\_\_  
Samantha Carroll, Regional Manager  
DMLW Southcentral Regional Land Office

*6/28/22*  
\_\_\_\_\_  
Date

**Exhibits**

Exhibit 1 – Donlin Mine Easement Plan Diagrams

Exhibit 2 – Donlin Gold Public Easement Plan

**APPENDIX A:  
TABLES:**

*Table 1: Donated Easements*

<b>Donated Easement</b>	<b>Grantor</b>	<b>Township, Range</b>	<b>Meridian</b>
Donated Easement #1 (DE 1)	TKC	22 North, 49-50 West	Seward
Donated Easement #2 (DE 2)	TKC, CC	23 North, 49 West	Seward
Donated Easement #3 (DE 3)	TKC, CC	23 North, 48 West 23 North, 49 West	Seward
Donated Easement #4 (DE 4)	TKC	23 North, 48 West 23 North, 49 West	Seward
Donated Easement #5 (DE 5)	TKC, CC	22 North, 48 West 23 North, 48 West	Seward
Donated Easement #6 (DE 6)	TKC, CC	22 North, 48 West 22 North, 49 West	Seward

*Table 2: Core Operating Area MTRS location*

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

*Table 3: Mining Claims Underlying ADL 236624*

<b>ADL</b>	<b>Customer</b>	<b>Township, Range</b>	<b>Sections</b>	<b>Meridian</b>
578775	Donlin Gold LLC	24 North, 48 West	35	Seward
578776	Donlin Gold LLC	24 North, 48 West	35	Seward
578791	Donlin Gold LLC	24 North, 48 West	35	Seward
578804	Donlin Gold LLC	23 North, 48 West	2	Seward
578805	Donlin Gold LLC	23 North, 48 West	2	Seward
578806	Donlin Gold LLC	23 North, 48 West	2	Seward
578810	Donlin Gold LLC	23 North, 48 West	2	Seward
578811	Donlin Gold LLC	23 North, 48 West	2	Seward
578814	Donlin Gold LLC	23 North, 48 West	2	Seward
578815	Donlin Gold LLC	23 North, 48 West	2	Seward
578816	Donlin Gold LLC	23 North, 48 West	11	Seward
578817	Donlin Gold LLC	23 North, 48 West	11	Seward
644953	Donlin Gold LLC	23 North, 50 West	35	Seward
644960	Donlin Gold LLC	23 North, 50 West	35	Seward
644961	Donlin Gold LLC	23 North, 50 West	35	Seward
644968	Donlin Gold LLC	23 North, 50 West	26	Seward
644976	Donlin Gold LLC	23 North, 50 West	26	Seward
644977	Donlin Gold LLC	23 North, 50 West	26	Seward
644985	Donlin Gold LLC	23 North, 50 West	23	Seward

<b>ADL</b>	<b>Customer</b>	<b>Township, Range</b>	<b>Sections</b>	<b>Meridian</b>
644986	Donlin Gold LLC	23 North, 50 West	24	Seward
644994	Donlin Gold LLC	23 North, 50 West	24	Seward
644995	Donlin Gold LLC	23 North, 50 West	24	Seward
645003	Donlin Gold LLC	23 North, 50 West	13	Seward
645004	Donlin Gold LLC	23 North, 49 West	18	Seward
645005	Donlin Gold LLC	23 North, 49 West	18	Seward
645015	Donlin Gold LLC	23 North, 49 West	18	Seward
645025	Donlin Gold LLC	23 North, 49 West	7	Seward
645026	Donlin Gold LLC	23 North, 49 West	8	Seward
645036	Donlin Gold LLC	23 North, 49 West	8	Seward
645046	Donlin Gold LLC	23 North, 49 West	5	Seward
645056	Donlin Gold LLC	23 North, 49 West	5	Seward
645057	Donlin Gold LLC	23 North, 49 West	5	Seward
666805	Donlin Gold LLC	23 North, 48 West	2	Seward
666810	Donlin Gold LLC	23 North, 48 West	11	Seward
666811	Donlin Gold LLC	23 North, 48 West	11	Seward
666812	Donlin Gold LLC	23 North, 48 West	11	Seward
666829	Donlin Gold LLC	24 North, 48 West	35	Seward
711738	Donlin Gold LLC	23 North, 48 West	11	Seward
711827	Donlin Gold LLC	24 North, 49 West	28	Seward
711828	Donlin Gold LLC	24 North, 49 West	28	Seward
711829	Donlin Gold LLC	24 North, 49 West	27	Seward
711830	Donlin Gold LLC	24 North, 49 West	27	Seward
711831	Donlin Gold LLC	24 North, 49 West	26	Seward
711834	Donlin Gold LLC	24 North, 49 West	25	Seward
711839	Donlin Gold LLC	24 North, 48 West	28	Seward
711841	Donlin Gold LLC	24 North, 48 West	27	Seward
711842	Donlin Gold LLC	24 North, 48 West	27	Seward
711843	Donlin Gold LLC	24 North, 48 West	26	Seward
711862	Donlin Gold LLC	24 North, 49 West	29	Seward
711863	Donlin Gold LLC	24 North, 49 West	28	Seward
711867	Donlin Gold LLC	24 North, 49 West	26	Seward
711868	Donlin Gold LLC	24 North, 49 West	26	Seward
711869	Donlin Gold LLC	24 North, 49 West	25	Seward
711870	Donlin Gold LLC	24 North, 49 West	25	Seward
711871	Donlin Gold LLC	24 North, 48 West	30	Seward
711872	Donlin Gold LLC	24 North, 48 West	30	Seward
711874	Donlin Gold LLC	24 North, 48 West	29	Seward
711875	Donlin Gold LLC	24 North, 48 West	28	Seward
711879	Donlin Gold LLC	24 North, 48 West	26	Seward
711880	Donlin Gold LLC	24 North, 48 West	26	Seward
711896	Donlin Gold LLC	24 North, 49 West	32	Seward

<b>ADL</b>	<b>Customer</b>	<b>Township, Range</b>	<b>Sections</b>	<b>Meridian</b>
711906	Donlin Gold LLC	24 North, 48 West	31	Seward
711907	Donlin Gold LLC	24 North, 48 West	32	Seward
711908	Donlin Gold LLC	24 North, 48 West	32	Seward
711926	Donlin Gold LLC	24 North, 49 West	32	Seward
711936	Donlin Gold LLC	24 North, 48 West	31	Seward
711937	Donlin Gold LLC	24 North, 48 West	32	Seward

## **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

*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)

*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