

Public Access Easements, Neighborhood Trails, and Public Access

Goals

Trails. Maintain, enhance, or provide adequate access within areas of development and between areas of current or future development.

Public Access. Maintain, enhance, or provide adequate access to public and private lands and resources. Provide for future trail and access needs. Protect or establish trail corridors to ensure continued public access.

Management Guidelines: Public Access – General

Before selling, leasing, or otherwise disposing of the land estate, DNR will reserve public use easements pursuant to the requirements of 11 AAC 51.015. This section of administrative code establishes when public access easements are to be reserved and the widths of these easements. Specific standards for section line easements are identified in 11 AAC 51.025 and for easements to and along navigable and public waters, in 11 AAC 51.035-045. These sections of Administrative Code shall be used as the basic for the reservation of public access easements in authorizations granted by DNR.

Management Guidelines: Trails within Developing Areas

A. General. The following guidelines pertain to the access corridors²² provided by trails within developed or developing areas and between these areas. This is a more specific application of the general public use easement. Access corridors provide movement areas for people and wildlife. They include the area of movement and, as appropriate, a buffer area adjacent to the corridor sufficient to provide separation from other uses. The width and siting of trail corridors depends upon their function and location. Easements are used to create an access corridor, similar to the more general public use easements described previously.

B. Requirement for Access Corridors. The Department shall assess the need for public access before selling, leasing, or otherwise disposing of the land estate. If local access needs are identified through the adjudication and agency or public review process, access corridors shall be reserved. This will occur through the retention of state land in public ownership or through the creation of a public use easement. Under either approach, the public is to have the right of access within the area of state land or the public use easement.

²² Access corridors differ from public use easements in that they only pertain to trails within or connecting to developing settlement areas and may include a buffer area in addition to the tread of the trail. Access corridors can be created by the imposition of a public use easement or through the creation of buffer, which is usually an area of transition space between different, and often conflicting, uses.

D. Ownership Considerations. The following factors shall be considered by DNR in making the decision to retain the access corridor under state ownership or to provide for public access through a public use easement:

1. If the access (usually a trail within a developed or developing area) is used as a neighborhood collector trail that connects to a public open space system or a trail of regional significance, access should be retained in public ownership.
2. If a trail is used as access by neighborhood residents, it should be dedicated to local government or established as an easement to an entity willing to accept maintenance and management responsibility. This would typically occur when the purpose is to establish access between lots or to improve pedestrian circulation within a subdivision.
3. If the access provides a connection to other areas and is considered of regional or statewide significance, it should be retained in public ownership.

E. Width of Trail Corridors. The width of the access corridor²³ shall be determined according to its function and location:

1. Within developed or developing areas, access corridors shall not be less than 25 feet in width for pedestrian movement and not less than 40 feet if motorized movement (other than car or truck) can be expected in addition to pedestrian travel. In areas where topographic conditions restrict development, widths less than 40 feet may be considered.²⁴
2. In all other areas, the width shall vary with terrain, function, and the need for separation from other uses, but shall not be less than 50 feet.
3. Trails or other access facilities of statewide or regional significance shall not be less than 50 feet in width.

F. Buffers. The widths of an access easement may be increased to include an area for a buffer. This area is in addition to the minimum access widths described above in item D. Buffers may be necessary to minimize land use and ownership conflicts, allow the future siting of public facilities, afford flexibility in the routing of public facilities, or to provide an adequate area for wildlife movement, or to adapt a trail to specific public uses or aesthetic or environmental concerns. Where buffers are authorized, they will be maintained in their natural condition unless enhancement is required because of existing site degradation. If the buffer is to function as a wildlife movement corridor, then DNR shall consult with ADF&G in the design of the buffer.

²³ An access corridor includes the tread of the trail and an area immediately adjacent to the tread.

²⁴ Note: These standards apply to motorized uses other than cars or trucks, or similar sized and types of vehicles. The standards of 11 AAC 51.015(d)(1)(D) apply when a 'neighborhood service road' is to be established or when a public use easement is to be used by cars or trucks. The width of this road or easement is not less than 60 feet.

The width of the buffer will depend upon the function of the access corridor and consideration of the above factors. However, there shall be a minimum of an additional 15 feet on either side of the access corridor when DNR requires buffers.

H. Trail Rerouting. Standards for the vacation and modification of trails are identified in 11 AAC 51.065. Rerouting of trails may be permitted to minimize land use conflicts, reduce duplication in trail routings, or minimize habitat destruction. If trails are rerouted, provision should be made for construction of new trail segments, if warranted, by type and intensity of use. Rerouting trails shall be done in consultation with affected private users and public agencies. Rerouted trails should allow the same uses and activities as the original trail.

I. Alignment with Crossings. When it is necessary for power lines, pipelines or roads to cross trail buffers, crossings should be at a 90-degree angle to the buffer. Vegetative screening should be preserved at trail crossings.

J. Access to Trailheads. Coastal access across state tidelands to designated trail corridors that begin at the shoreline will be protected.

Management Guidelines: Public Access

A. Retain access. Improve or maintain public access to areas with significant public resource values by retaining access sites and corridors in public ownership; reserving rights of access when state land is sold or leased; or identifying, managing and legally validating RS 2477 (Revised Statute Section 2477) rights-of-way. RS 2477 rights-of-way within the planning area that are identified in AS 19.30.400 (d) or otherwise determined by DNR to qualify as RS 2477 trails are to be retained in state ownership or made a reservation²⁵ in the transfer of state land. Standards for the vacation of easements are contained in 11 AAC 51.065. Information regarding RS 2477 rights-of-way easements can be found at the DNR web site: <http://www.dnr.state.ak.us/mlw/trails/index.htm> or is available in DNR's Kodiak Island Borough Public Access Atlas.

B. Access to Non-State Lands. Reasonable access will be provided across state lands to other public and private lands. Existing legal access will not be precluded unless equivalent access is available.

C. Management of ANCSA 17(b)2 Easements. The state will identify and assert 17(b) easements in order to provide access to federal and state land. Generally, DNR will not accept management of 17(b) easements unless the state already actively manages a portion of the trail or easement, or state management will best protect public access to state lands. Information regarding ANCSA 17(b) easements can be found at the DNR web site: <http://www.dnr.state.ak.us/mlw/trails/index.htm> or is available in DNR's Kodiak Island Borough Public Access Atlas.

²⁵ This is typically referred to as a 'subject to' in entitlement decisions and in other authorizations issued by DNR.

D. Access for Development. When an access route is constructed for resource development over state land, public access to mineralized areas, recreation, fish, wildlife, or other public resources should be retained. If the new resource facility is likely to be of limited duration and provides superior access to the current means of access, the state should retain the new facility for public access. If the new facility will or should not provide public access, the current means of public access should be retained.

E. Limiting Access. Access to state lands may be curtailed at certain times to protect public safety, provide for the remediation of public use areas, allow special uses, and prevent harm to the environment, fish and wildlife. Public access may be limited because of the presence of fire management operations, timber harvest, high soil moisture content when vehicular traffic may cause damage to the base or sub-base, and sensitive populations of fish or wildlife.

F. Siting and Constructing Temporary and Permanent Roads or Causeways. Temporary and permanent roads or causeways will, to the extent feasible and prudent, be routed to avoid vegetated tideflats, avoid streams and minimize alteration of natural drainage patterns, and avoid long-term adverse effects on water quantity or water quality. If a temporary road is routed through vegetated tidelands, clean fill will be required and construction methods, which facilitate removal of the fill, will be required.

G. Joint Use and Consolidation of Surface Access. Joint use and consolidation of surface access routes and facilities should be encouraged wherever it is feasible and prudent to do so²⁶. Surface access also should be sited and designed to accommodate future development and avoid unnecessary duplication.

H. Anchorages. Activities within anchorages²⁷ are allowed if they will not significantly degrade the public's continued ability to use the anchorage. This policy is to be interpreted conservatively, particularly if the anchorage has been historically used (or can be expected to be used) as a safe harbor for vessels from storms. Aquatic farms and floating facilities should not be sited in anchorages necessary to, or used for, the anchoring of vessels and are not to be authorized if the anchorage has been historically used as a safe harbor. In the adjudication of authorizations within anchorages, consideration should be given to the effect of the potential use upon anchorage capacity.

²⁶ Note: There are instances where access routes should not be consolidated; their purposes may be at odds with one another or one consolidated route cannot effectively provide access to resources required by the public.

²⁷ Note to DNR adjudicators: Unlike DNR area plans in other areas with tidelands, the Kodiak Area Plan does not identify anchorages on its plan maps because of the lack of accurate information. Anchorages may exist in tidelands and the presence of a potential anchorage must be assessed prior to issuing an authorization.

I. Other Guidelines Affecting Public or Trail Management. A number of other guidelines may affect public and trail access management. See in particular the following sections of this chapter:

- Cultural Resources
- Fish and Wildlife Habitat and Harvest Areas
- Forestry
- Material Sites
- Recreation, Tourism, and Scenic Resources
- Settlement
- Subsurface Resources