

for recreational purposes or other public purposes for which the water is used or capable of being used consistent with the public trust.

(d) This section may not be construed to affect or abridge valid existing rights or create a right or privilege of the public to cross or enter private land. (§ 4 ch 56 SLA 1999)

Sec. 38.05.127. Access to navigable or public water. (a) Before the sale, lease, grant, or other disposal of any interest in state land adjacent to a body of water or waterway, the commissioner shall,

(1) determine if the body of water or waterway is navigable water, public water, or neither;

(2) upon finding that the body of water or waterway is navigable or public water, provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the commissioner finds that regulating or limiting access is necessary for other beneficial uses or public purposes.

(b) The department shall adopt regulations implementing this section.

(c) Nothing in this section affects valid existing rights or limits in any way the constitutional right of the public to use and have free access to the navigable or public waters of the state.

(d) Upon application by a municipality or an affected owner of land, the department may vacate, release, modify, or relocate an easement and right-of-way for public access to or along navigable or public waters reserved by the department in a patent issued under AS 29.65 or former AS 29.18, if the commissioner determines the action is consistent with the public interest.

(e) The establishment of easements or rights-of-way for oil and gas, gas only, and mineral leases under (a) of this section need not be made until the leases are ready to be developed.

(f) Rights-of-way or easements to waterways established under (a)(2) of this section shall be established approximately once each mile unless the commissioner makes a written finding that regulating or limiting access is necessary for other beneficial uses or public purposes.

(g) The commissioner may exchange land under AS 38.50 to create access to public water of the state. (§ 2 ch 117 SLA 1976; am § 32 ch 113 SLA 1981; am §§ 37, 38 ch 152 SLA 1984; am § 57 ch 74 SLA 1985; am § 3 ch 82 SLA 1985; am § 2 ch 53 SLA 1988; am § 13 ch 49 SLA 2004)

Cross references. — For legislative findings and purpose in connection with the 1985 amendment to (c) of this section, see § 1, ch. 82, SLA 1985 in the Temporary and Special Acts; for legislative findings and intent in connection with the enactment of (f) and (g) of this section, see § 1, ch. 53, SLA 1988 in the Temporary and Special Acts.

Effect of amendments. — The 2004 amendment effective June 5, 2004, inserted "gas only" in subsection (e).

Legislative history reports. — For report on ch. 117, SLA 1976 (HCS 2d CSSB 215), see 1976 Senate Journal, p. 452; 1975 House Journal, p. 1296.

NOTES TO DECISIONS

Cited in CWC Fisheries, Inc. v. Bunker, 755 P.2d 1115 (Alaska 1988).

Sec. 38.05.128. Obstructions to navigable water. (a) A person may not obstruct or interfere with the free passage or use by a person of any navigable water unless the obstruction or interference is

- (1) authorized by a federal agency and a state agency;
- (2) authorized under a federal or state law or permit;
- (3) exempt under 33 U.S.C. 1344(f) (Clean Water Act);
- (4) caused by the normal operation of freight barging that is otherwise consistent with law; or

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