



DATE: 9/15/2022

TO: Akis Gialopsos, Acting Commissioner
FROM: Southcentral Regional Land Office (SCRO)
SUBJECT: Benka Lake access blockage

Issue: A Talkeetna area landowner has recently installed a gate blocking access to the only constructed boat launch on Benka Lake. This blockage is problematic for lake front property owners with water-only access that have historically used the boat launch. Benka Lake is also the Talkeetna Fire Department's water source for area firefighting efforts. In addition, the Alaska Department of Fish and Game (ADF&G) has stocked the lake for decades, however without public access stocking will be discontinued. Furthermore, boats currently on the lake will need to be retrieved before the lake freezes to prevent damage, and potential contamination of public waters. The applicable subdivision plat was perfected prior to the passage of Alaska's law that provides for access to and along navigable and public waters (To and Along easements).

The landowner's gate is technically located on private property and therefore legal. As shown on the applicable subdivision plat, a single survey monument at the end of S. Lakeview Street creates a cul-de-sac located entirely on the uplands. Consequently, public access between S. Lakeview Street and the waters of Benka Lake does not exist. There are two alternative legal access points to the lake, which are undeveloped section line easements that will likely be a challenge to develop as lake access.

The landowner has stated the gate was installed to discourage trespass on private property. Immediately following installation, the gate was demolished and had to be fully replaced. The property owner has expressed a willingness to grant revocable access on a case-by-case basis.

Background: The two parcels of interest were conveyed by U.S. Patent to DNR and subdivided in 1965. The next year, DNR conducted a land planning effort and land sale auction for parcels surrounding Benka Lake, which specified public access to the lake would be retained for public recreation (Tract A, Benka Lake Alaska Subdivision), creating a public expectation that Benka Lake has public access.

The land status pattern of the two applicable parcels is as follows:

Lot 3: West side of S. Lakeview Street

- 1966 - DNR leased parcel.
- 1996 - DNR conveyed lands to Mental Health Trust Authority (MHT) without a deed reservation for a To and Along easement. Lease administration transferred to MHT.
- 2021 - MHT conveyed parcel to a private party without public access reserved.

Lot 1: East side of S. Lakeview Street

- 1984 - DNR conveyed lands to UA - no public access reserved but a deed provision for access was included as required by the Settlement Agreement accepted in 1982 between DNR and UA (see below).

- 1992 – UA conveyed parcel to private party - no public access reserved but general deed provisions for access were included (see below).

The DNR deed conveying Lot 1 to the UA required reservation and platting public access to navigable and public waters. The reservation of such an easement did not take place. Deed provisions included in the 1984 deed granted by DNR to the UA state:

*The Grantee, by acceptance of this Deed and by separate agreement with the Grantor, has and does agree to **provide reasonable access to the public to all navigable and public waters on or adjacent to the above-described real property.** The Grantor further agrees that before Grantee develops or conveys any interest in the real property described above, Grantee shall **identify and plat such easements or rights of way** as may be reasonably necessary to insure free public access to all navigable or public waters on or adjacent to the real property described above and to notify Grantor of their location.*

The 1992 deed granted by the UA to the private party state:

Subject however, to all reservations, easements, restrictions, covenants, encumbrances and expectations of record, and reservations in the Federal Patent or other conveyance by which the Grantor acquired title.

Therefore, formal engagement with the UA is needed as DNR has no record of UA’s efforts to comply with deed provisions prior to Lot 1 being conveyed into private ownership. The UA’s perspective will help inform resolution of this matter.

Primers: There is no current public access easement managed by DNR in this location. This land is no longer managed by DNR, however, DNR action created a public expectation that access to Benka Lake was secured. It appears to be DNR’s intent in the late 1960’s, to retain lands in state ownership for public boat launching and recreation purposes.

For example, ADF&G records indicate a stocking request was received from DNR in 1965. ADF&G’s file contained a map indicating Lot 1 (Tract A, before it was subdivided in 2000) was for “Boat Launching and Public Recreation”. It also has the Lakeview Road alignment labeled “State Land Access Road Constructed to Lake. This appears to be labeling applied to a previously recorded Plat: the provenance of this map is unknown.

Furthermore, adjacent lots were subject to a 1987 decision for purchase of leaseholds elsewhere on Benka Lake that determined waiving an easement to navigable and/or public waters because “access to this lake is available by Lakeview Street on the west boundary of Track A and Track A itself which is classified public recreation which provide access by hillside drive.”(Page 9 of the Preliminary Decision) This decision also limited public access easements along the lake front. Therefore, the determination to not reserve To and Along easements at this location is viewed as an error because S. Lakeview Street in fact does not provide access to Benka Lake. Today, it would not be in the state’s best interest to limit or eliminate the public’s interest in access to public and navigable waters.

Protecting the public’s right to use public and navigable waters is one of Governor Dunleavy’s priorities and the foundation of the Unlocking Alaska initiative.

Attachments

- Benka Lake Alaska Subdivision (Plat 66-42 Palmer Recording District)
- ADF&G 1965 stocking map
- Benka Lake Alaska Subdivision Addition 1 (Plat 2000-4 Talkeetna Recording District).