

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

**Preliminary Decision**

**Petitioner: Tanalian, Inc.**

**Section Line Easement Vacation**

**EV-3-280**

**Petitioned Action:**

The proposed action consists of vacating portions of the 33-foot wide section-line easements (SLEs) each side of the protracted section line within Lot 2, Block 1 of Tanalian Shores No. 4 (Plat 2017-2 Iliamna Recording District), as depicted in Attachment A. More particularly, this action lies within Government Lot 3 of Protracted Section 9 and Government Lot 1 of Partially Surveyed Section 10, Township 1 North, Range 29 West, Seward Meridian.

The reasons cited by the applicant:

- The section-line easement creates an unnecessary public access through the center of the proposed lots.
- The public will have access via Willow Road and Shoreline rights-of-way (ROW).
- The current and pending ROWs are fully constructible while the current SLEs may not be.

**Legal Authority:**

AS 19.10.010, AS 19.30.410, AS 38.05.035, AS 38.05.945, 11 AAC 51.025, 11 AAC 51.065, 11 AAC 51.100 and 1969 Opinions of the Attorney General No. 7.

The Alaska Department of Transportation and Public Facilities (DOT/PF) and the Department of Natural Resources (DNR) have concurrent authority for approving the vacation of SLEs.

**Administrative Record:**

The DNR Survey Case File EV-3-280 constitutes the administrative record used for the basis of this decision.

**Borough:**

The proposed action is located within the Lake and Peninsula Borough (LPB).

**State Easement Interest:**

**33-foot wide section-line easement exists within the subject property pursuant to Chapter 35, SLA 1953.** (See Discussion 2).

**Underlying Interest:**

The petitioner owns the estate underlying the SLE proposed for vacation.

**Alternate Route:**

The proposed alternate access is via the 50' wide and 25' wide portions of the Willow Road ROW, and a portion of the 60' wide Shoreline Drive ROW. Said rights-of-way were dedicated to public use by the plats of Alsworth Subdivision Add. No. 3 (Plat 82-8); Alsworth Subdivision Addition No. 6 (Plat 87-10); and Tanalian Shores No. 4 (Plat 2017-2); all within the Iliamna Recording District. Public access to adjoining & adjacent parcels is not negatively affected by this action.

**Land Management Policies:**

1) Pursuant to AS 19.30.410 the Department of Natural Resources, the Department of Transportation and Public Facilities, or another agency of the state may not vacate a right-of-way acquired by the state under former 43 U.S.C. 932 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.

2) Pursuant to 11 AAC 51.065, before any vacation, modification, or relocation of a public easement, the petitioner must demonstrate to the satisfaction of the department that equal or better access is available. Equal or better access must be access that 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 usable, 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 usable, the petitioner must arrange for the development or improvement to be completed before the vacation takes effect.
- the department will determine if the vacation is in the State's best interest

**Public Use Patterns:**

A field inspection was not conducted; therefore, it is unknown whether vehicles, pedestrians or other public interests have been or are currently using those portions of the SLE proposed to be vacated. However, due to the nature of the section line that these 33' SLEs are attached to (*i.e. being an unconstructed protracted [unsurveyed] section line, located in a remote area, almost one mile from the nearest monumentation that controls the location of this section line*) it is highly unlikely that the general public or any public interests would know the exact location of this 66-foot wide SLE corridor.

**Practicality of Use:**

Section-line easements along protracted section lines are not practical to use for legal public access until the location of the section line has been determined by an official survey. To avoid trespass issues the exact location of the easement must be known on the ground before it can be used. In addition, pursuant to Footnote 15 of the 1969 Opinions of the Attorney General No. 7, "a section line right-of-way [SLE] attaches to the protracted section line subject to subsequent

conformation with the official public land survey” (emphasis added). Only then do public access rights pursuant to AS 19.10.010 attach to the section line. In addition, sufficient dedicated public access exists that provides practical access to the adjoining lands.

**Agency Review:**

Initial Agency review of the proposed action began on September 27, 2017 and concluded July 16, 2018. Agencies notified included Department of Transportation/Public Facilities (DOT/PF) Southcoast Region, Alaska Department of Fish and Game (ADFG), DNR Division of Mining, Land and Water – South Central Regional Office (SCRO), Alaska Mental Health Trust Land Office (MHTLO) and DNR Division of Parks and Outdoor Recreation (DPOR).

**Agency Comments:**

1. All agencies submitted comments of non-objection.
2. No other comments or objections on the proposed action were received.

**Discussion:**

1. For a section-line easement to exist 1) there must be an approved survey of the subject section line - see 2b below; 2) for private lands the date of entry/occupancy must be subsequent to the survey approval date; or the subject lands are or at one time were owned by the State – see 2c below; and 3) the subject lands must be unreserved and unappropriated – see 2d below.
2. Determination of the existence of the Section-Line Easements:
  - a. The U.S Rectangular Survey (USRS) Plat for Township 1 North, Range 29 West, Seward Meridian, Alaska was approved and accepted by BLM on February 19, 1999, and Officially Filed March 5, 1999. The section line – i.e. the record boundary between Government Lot 3, Section 9 and Government Lot 1, Section 10 - was not physically surveyed or monumented/ It is depicted as a protracted section line; however, its location as a boundary separating said Lots 3 & 1 was approved and accepted by this plat. There is nothing referenced on the USRS plat or noted in the associated field notes indicating how the location of this section line was determined; therefore, it is presumed that BLM used the Official Protraction Diagram S12-13 as the basis of control for the location of this – purportedly - unsurveyed boundary.

To add further creditability to this presumption, Federal Patent 50-2007-0277 specifically identifies said Government Lot 3, Section 9 and said Government Lot 1, Section 10 as separate conveyable (i.e. surveyed) parcels rather than as unsurveyed remainders. Chapter 1, Section 1.1 of the BLM 2009 Manual of Surveying Instructions states in part “*Since the Land Ordinance of 1785, it has been the continuous policy of the United States that land shall not leave Federal ownership until it has first been surveyed, and an approved plat of survey has been filed.*” Since BLM conveyed said lots by patent, and since it has been continuous US policy for more that 230 years that land shall not leave Federal ownership until it has first been surveyed, the BLM must clearly recognize this common boundary as a surveyed line approved by the Official Protraction Diagram.
  - b. With the above said, the 1969 Opinions of the Attorney General No. 7, DNRs most current opinion regarding Section Line Dedications on protracted section lines, states in part “...where protracted surveys have been approved, and the effective date thereof published in the Federal Register, then a section line right-of-way attaches to the protracted section line subject to subsequent conformation with the official public land surveys.”

- i. The protracted survey of Townships 1 to 4 North, Ranges 29 to 32 West, Seward Meridian, Alaska, according to Protraction Diagram (S12-13), was approved by BLM on July 27, 1959.
  - ii. The Notice of Filing of Protraction Diagram (S12-13) was published in the Federal Register on September 30, 1959.
  - c. The lands underlying the SLEs proposed to be vacated, were conveyed into private ownership by Patent No. 50-2007-0277. The date of entry (application filed) according to the case file abstract for BLM case file AKAA 11157 was December 16, 1975.
  - d. A review of the BLM Historical Index indicates that the subject lands described above were reserved on January 22, 1943 by Public Land Order 82 (PLO) “for use in connection with the prosecution of the war”. Said lands remained “withdrawn from sale, location, selection, and entry” until PLO 323, approved August 14, 1946, revoked PLO 82 and restored said lands to entry subject to a 90-day period for preference-right filings. Entry for the general public became available on January 15, 1947.
  - e. Chapter 35, SLA 1953 states in part “A tract 100 feet wide between each section of land owned by the Territory of Alaska, or acquired from the Territory, **and a tract four rods wide between all other sections in the Territory**, is hereby dedicated for use as public highways, the section line being the center of said right-of-way.
  - f. In conclusion, pursuant to CH 35, SLA 1953, 33 foot wide section-line easements attach each side of the protracted section line separating Government Lot 3, Section 9 and Government Lot 1, Section 10. **Bear in mind, 1969 Opinions of the Attorney General No. 7, states “a section line right-of-way attaches to the protracted section line subject to subsequent conformation with the official public land survey” (emphasis added). Only then do public access rights pursuant to AS 19.10.010 attach to the section line. Refer to the “Practicality of Use” section of this decision for more information**
3. The proposed alternate access is reasonably comparable and meets the requirements for vacation of a portion of the subject section-line easement pursuant to AS 19.30.410 and 11 AAC 51.065. The proposed alternate route is adequately wide to satisfy all present and reasonable foreseeable uses. Continued access to adjacent lands is ensured by the, dedicated Willow Road ROW and dedicated 60’ Shoreline Road ROW.
4. Pursuant to 11 AAC 51.065(e)(1), the department will give consideration to the recommendations of the LPB Platting Board regarding this action when a copy of the Approved Minutes are received at DNR.

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

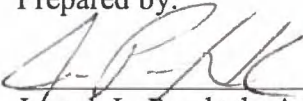
1. Pursuant to AS 38.05.945, a Public Notice must be completed. The Department of Natural Resources may modify the decision after analyzing public comments. The advertising cost for Public Notice is at the expense of the applicant.
2. Comply with LPB’s conditions of approval unless waived by the Director, DMLW.
3. A final plat (owner signed / surveyor sealed Mylar) must be submitted to DNR within two years from the date of approval of the Final Decision unless extended by DMLW, Survey Section.

4. Submittal of a Certificate to Plat, current within 90-days, with the final plat.

**Recommendation:**

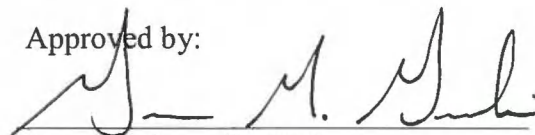
Based on our findings, the applicant meets DNR's requirements to vacate the subject section-line easement. The proposed vacation may be in the state's best interest. Therefore, the Division of Mining, Land and Water, Survey Section recommends approval of this action and may proceed with adjudication and public notice in accordance with AS 38.05.945.

Prepared by:

  
Joseph L. Poydack, Adjudicator

30 October 2018  
Date

Approved by:

  
Gwen M. Gervelis, PLS  
Chief, Survey Section

10/30/18  
Date

**PUBLIC NOTICE:**

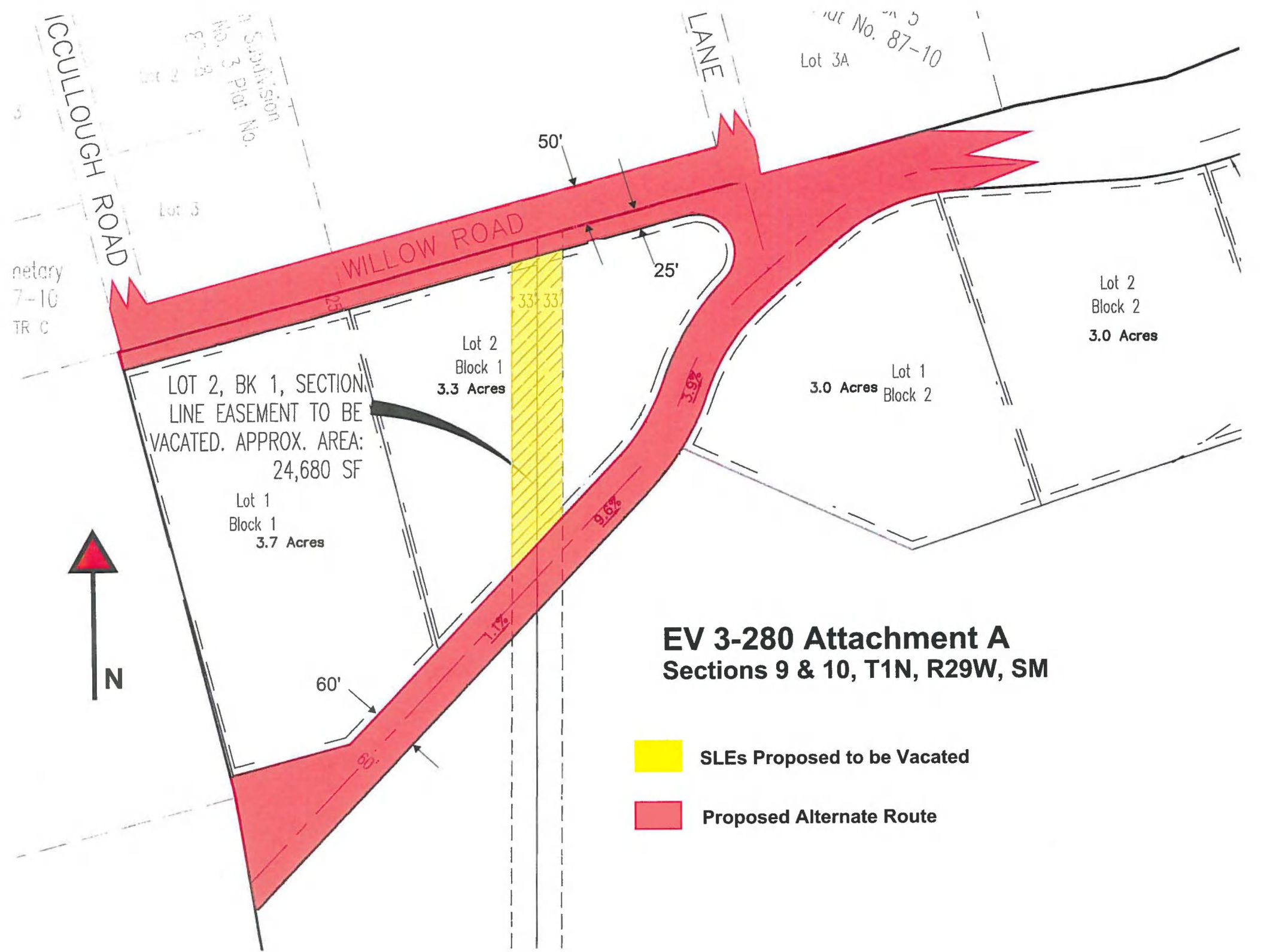
**Notice of Preliminary Decision  
Section Line Easement Vacation  
EV-3-280**

Per 11 AAC 51.065, the Department of Natural Resources, Division of Mining, Land and Water has made a Preliminary Decision (PD) giving contingent approval to a petition vacating the 33-foot wide section-line easements in Lot 2, Block 1 of Tanalian Shores No. 4 (Plat 2017-2), within Sections 9 & 10, T1N, R29W, SM.

The public is invited to comment on the PD. Copies are available from DMLW, 550 W. 7<sup>th</sup> Avenue, Suite 650, Anchorage, AK 99501-3576 or <http://notes3.state.ak.us/pn/>. All comments must be received in writing at DMLW by 5:00 p.m. on December 3, 2018. **To be eligible to appeal, one must respond in writing during the comment period.** If public comment analysis indicates the need for significant changes to the PD, additional public notice will be given. If no significant change is required, the PD, including any minor changes, will be issued as a Final Decision (FD). To obtain PD/FD copy, reference case number EV-3-280; include date, your email and mailing address and telephone number. If you have any questions, contact DNR, Joseph L. Poydack, 375-7733 or [joseph.poydack@alaska.gov](mailto:joseph.poydack@alaska.gov).

DMLW reserves the right to waive technical defects in this publication.

Those with audio impairments may call Anchorage DNR Public Information Center, 10-5, M-F, TDD#269-8411.



## EV 3-280 Attachment A

### Sections 9 & 10, T1N, R29W, SM