

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

Preliminary Decision

**Petitioner: State of Alaska, Department of Natural Resources, Division of Mining,
Land & Water, Land Sales Section**

Section Line Easement Vacation

EV-3-267

Petitioned Action:

The proposed action consists of vacating the 50' section-line easements (SLEs) lying within Lots 5, 6 & 7, US Survey 4591, Sections 13 & 14, T8N, R8W, CRM, as depicted in Attachment A.

The reason cited by the applicant: "The section line easements run through the middle of existing government [Small Tracts] lots. The vacation will un-encumber the potential building sites and allow for better, more efficient use of the property."

Legal Authority:

AS 19.10.010, AS 38.05.035(e), AS 38.05.945, 11 AAC 51.025, 11 AAC 51.065 and 11 AAC 51.100

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-3-267 constitutes the administrative record used for the basis of this decision.

Borough:

The proposed action is located within the Matanuska Susitna Borough (MSB).

State Easement Interest:

50-foot wide section-line easements exist within the subject property, on each side of the protracted section line, pursuant to AS 19.10.010. (See Discussion 1).

Underlying Interest:

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

Alternate Route:

The proposed alternate route consists of a 50 foot wide public access easement to be dedicated along the southerly boundary of Lot 7; an abutting right-of-way in Lot 8 not exceeding fifty feet in width, for roadway and public utility purposes per Federal Patent 50-70-0055; and a 100-foot wide public access easement to be dedicated outside of, and along the northeast boundaries of a portion of US Survey 4591 as depicted on Attachment A. Combined, said alternate route will provide an uninterrupted 100-foot wide public access corridor between Susitna Lake and the protracted section line extending north of the proposed vacation. In addition to the above, 15 & 20-foot wide public utility easements will be dedicated within certain parcels.

Land Management Policies:

1) 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:

The current state of the subject SLEs are not constructed. DMLW, Survey Section has no known information that vehicles, pedestrians or other public interests have been or are using those portions of the SLE proposed to be vacated. A field inspection was not conducted.

Practicality of Use:

The SLEs proposed to be vacated run through moderately level, forested terrain and are not constructed. Sufficient public access will be reserved and/or dedicated and if approved, will provide equal or better access to Susitna Lake and adjacent lands.

Agency Review:

Initial Agency review of the proposed action began on February 24, 2017 and concluded June 2, 2017. Agencies notified included Department of Transportation/Public Facilities (DOT/PF) Northern 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. Determination of the existence of Section-Line Easements:

- a. The Protraction Diagram (CR4-8) for Townships 5 to 8 North, Ranges 5 to 8 West, Copper River Meridian, Alaska was approved by the BLM on March 17, 1960. Said protraction diagram depicts the line common to Sections 13 & 14, T8N, R8W, CRM as a protracted section line.
 - The 1969 Opinions of the Attorney General No. 7 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...". Notices of Filing in the Federal Register of Alaska protraction diagrams has been documented as early as 1959.
- b. The BLM plat of U.S. Survey No. 4591, embracing Lots 1 to 21 inclusive, was accepted by the Chief, Division of Cadastral Survey on March 6, 1969. On this date said Lots 1-21 became reserved pursuant to the Act of June 1, 1938 (52 Stat 609); the Small Tracts Act.
 - The Rectangular Survey Plat for Township 8 North, Range 8 West, Copper River Meridian, Alaska was accepted by the BLM on March 6, 1978.
 - Since the subject lands were reserved prior to rectangular survey plat approval public highway rights (e.g. section-line easements) pursuant to the Act of July 26, 1866 (RS 2477), now codified under 43 USC 932, did not arise by operation of statute; however,
- c. The lands underlying the SLEs proposed to be vacated were then conveyed to the State of Alaska by Federal Patent No. 50-82-0090 on July 27, 1982. **For surveyed or unsurveyed land owned by the state on or after July 1, 1960, the width, as identified in AS 19.10.010, is 50 feet (11 AAC 51.025, editor's note #7).**

2. The proposed alternate access meets the requirements for vacation of those portions of the subject section-line easement pursuant to 11 AAC 51.065. The proposed alternate route is equally useable and will be protected by easements to be dedicated and that are adequately wide to satisfy all present and reasonable foreseeable uses. Continued access to Susitna Lake and adjacent lands is ensured by the proposed alternate route

3. Pursuant to 11 AAC 51.065(e)(1), the department will give consideration to the recommendations of the MSB 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:

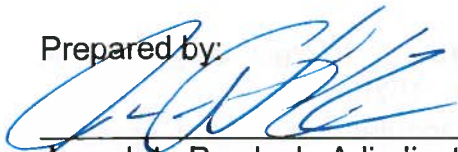
1. Dedication of the Public Access and Public Utility Easements as depicted on Attachment A.

2. 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.
3. Comply with MSB's conditions of approval unless waived by the Director, DMLW.
4. 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.
5. 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 easements. 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 and 40.15.305(e).

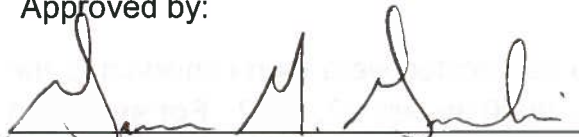
Prepared by:



Joseph L. Poydack, Adjudicator

17 August 2017
Date

Approved by:



Gwen Gervelis, PLS
Acting Chief, Survey Section

8/17/2017
Date

PUBLIC NOTICE:

**Notice of Preliminary Decision
Section Line Easement Vacation
EV-3-267**

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 to vacate the 50' section-line easements lying within Lots 5, 6 & 7, US Survey 4591, Sections 13 & 14, T8N, R8W, CRM.

The public is invited to comment on the PD. Copies are available from DMLW, 550 W. 7th Avenue, Suite 650, Anchorage, AK 99501-3576 or <https://aws.state.ak.us/OnlinePublicNotices/>. All comments must be received in writing at DMLW by 5:00 p.m. on October 2, 2017. **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-3-267; 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.

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