

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

**PRELIMINARY DECISION**

**Petitioner: Ron Mitchell for AHTNA, Inc.  
Section-Line Easement Vacation**

**EV-3-161**

**PETITIONED ACTION:**

The proposed action consists of vacating the section line easement lying within Lot 1, Block 5, Tazlina Hill Subdivision, ASLS 79-227 (Plat 80-19 Chitina Recording District). This action is located within Section 16, Township 3 North, Range 1 West, Copper River Meridian.

The reason for this request is to allow for the subdivision of Lot 1, Block 5, Tazlina Hill Subdivision. The petitioner's surveyor states that the State of Alaska has constructed alternative legal access to the lands that would potentially be served by this easement.

**AUTHORITY:**

AS 29.03.030, AS 38.05.035(e), AS 38.05.945, AS 40.15.070, AS 40.15.305[f], 11 AAC 51.065, 11 AAC 53.630-730. The Alaska Department of Natural Resources (DNR) is the platting authority for the state in the Unorganized Borough.

**ADMINISTRATIVE RECORD:**

Department of Natural Resources Survey Case File EV-3-161 constitutes the administrative record used for the basis of this decision.

**BOROUGH:**

This action is located within the Unorganized Borough.

**PUBLIC EASEMENT INTEREST:**

A 50 foot wide section line easement exists within section 16 pursuant to AS 19.10.010.

**UNDERLYING INTEREST:**

The petitioner owns the estate underlying the SLE proposed to be vacated.

**ALTERNATE ROUTE:**

The proposed alternate access route is comprised of the dedicated and constructed School Road ROW (plat 80-19, Tazlina Hill Subdivision), and the remaining unconstructed 50' SLE in section 16 and 33' SLEs in sections 9, 10 and 15.

### **LAND MANAGEMENT POLICIES:**

Pursuant to 11 AAC 51.065(f), 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 useable, 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 useable, 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:**

At the present time the portions of SLE proposed for vacation are not constructed. There is no known evidence that the SLE is currently being used, or has ever been used by the public or any State or Federal agency for access. A 40' power line easement, Copper Valley Electric Association, currently crosses the SLE at a 45<sup>0</sup> +/- angle.

### **PRACTICALITY OF USE:**

The SLE proposed to be vacated runs through nearly level, mostly vegetated terrain; said SLE is not constructed except for some brushing where the CVEA power line easement crosses said SLE. The combined retained easement and adjacent dedicated ROWs are sufficient for present and reasonably foreseeable future uses.

### **PUBLIC NOTICE:**

Public Notice (AS 38.05.945 and AS 40.15.305[e]). Public notice of this action will be provided to and paid for by the applicants for publication in a newspaper of statewide circulation. The notice will be sent (verified) to property owners within 500 feet of the subject land, as well as other affected individuals and agencies. The post offices in Glennallen and Copper Center will be requested to post the notice per AS 38.05.945(b)(3)(B). The notice will also appear in the Alaska Online Public Notice System.

### **AGENCY REVIEW:**

Agency review of the proposed action began on January 26, 2012 and concluded on September 26, 2012. State agencies notified were the Department of Transportation and Public Facilities (DOT/PF) Northern Region, Department of Fish and Game (ADF&G), Department of Natural Resources, Division of Mining, Land and Water, Southcentral Regional Land Office (SCRO), Mental Health Trust Land Office (MHTLO) and Division of Parks and Outdoor Recreation (DPOR). A field inspection was not conducted for this petition.

### **AGENCY COMMENTS:**

1. In an email dated 5/3/2012, SCRO agreed to the vacation of the SLE as proposed.
2. The remaining agencies submitted comments of non-objection.
3. No other comments on the proposed action were received.

### **DISCUSSION AND FINDINGS:**

1. Determination of the existence of the Section-Line Easements
  - a. Rectangular Survey Plat for Township 3 North, Range 1 West, Copper River Meridian, Alaska was approved by the General Land Office April 11, 1912.
  - b. The lands underlying the section-line easements in Section 16 were conveyed to the State of Alaska by Patent No. 1220724 as "School Section" lands (School Trust Lands). The date of entry (application filed) according to the case abstract for BLM Case AKA 051844 was April 27, 1960. School Section lands were certain Sections 16 and 36 granted to the Territory of Alaska for the support of public schools by the Act of March 4, 1915 (38 Stat. 1214). In 1978 the State passed legislation (Ch. 182, SLA 1978) which purported to convert the State's trust lands into general grant lands, thus making school section lands part of the State's unrestricted grant public domain. Pursuant to DNR Department Order 143, the Alaska DNR Land Abstract for T3N, R1W, Section 16, CRM, documented various cases' status, none of which appeared to interfere with the proposed action. **For any surveyed land owned by the Territory of Alaska or the state on or after March 26, 1951 through June 30, 1960, the width identified in ch. 123, SLA 1951 for any section-line easement is 50 feet (11 AAC 51.025, Editor's Note #5).**
  - c. The lands underlying the section-line easements in the SE1/4SE1/4 of adjoining Section 9 were conveyed into private ownership by Patent No. 50-80-0002. The date of entry (application filed) according to the case abstract for BLM Case AKA 006704A was March 11, 1974.
  - d. The lands underlying the section-line easements in adjoining Sections 10 and 15 were conveyed into private ownership by Patent No. 1158433. The date of entry (application filed) according to the case abstract for BLM Case AKA 025376 was August 19, 1953.
  - e. A search of the BLM historical index verified that the lands described in above sections "c" and "d" were unappropriated and unreserved immediately prior to and on April 6, 1923.. **For surveyed land owned by the Territory of Alaska at any time on or after April 6, 1923 through January 17, 1949, or for surveyed federal land that was unappropriated and unreserved at any time during that period, the width identified in Ch. 19, SLA 1923 for any section line easement is 33 feet (11 AAC 51.025, Editor's Note #2).**

2. Pursuant to 11 AAC 51.065, the proposed alternate route is equally useable, protected by easements of record and adequately wide to satisfy all present and reasonable foreseeable uses.

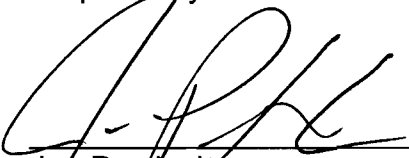
**Approval of the proposed action is contingent upon the following conditions:**

1. Pursuant to AS 38.05.945, public notice of the proposed action must be completed. The Department of Natural Resources may modify the decision based upon public comments. The advertising cost for public notice is at the expense of the applicant.
2. Approval of a State Platting Resolution.
3. A final plat must be submitted within 18-months from the date of the vacation approval. The survey plat must be filed in accordance with the provisions of AS 40.15.300-380 and in compliance with the provisions of 11 AAC 53.600-.900.
4. Submittal of a current Certificate to Plat.

**Recommendation:**

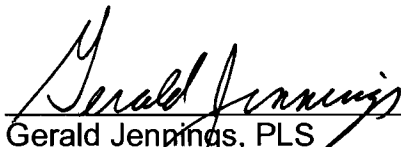
Based on our findings, the applicant meets DNR's requirements to vacate the subject section-line easement. The proposed vacation may be in the State's best interest. Therefore, the Division of Mining, Land and Water, Survey Section recommends approval of these actions and may proceed with adjudication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

Prepared by:

  
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Joe Poyback  
Adjudicator

18 Dec 2012  
Date

Approved by:

  
\_\_\_\_\_  
Gerald Jennings, PLS  
Chief, Survey Section

Dec 18, 2012  
Date

**PUBLIC COMMENT:**

**Notice of Public Hearing and Notice of Preliminary Decision  
Section-Line Easement Vacation EV 3-161**

Per 11 AAC 51.065, the Department of Natural Resources, Division of Mining, Land and Water has made a Preliminary Decision giving contingent approval to a petition submitted by AHTNA, Inc, to vacate the 50-foot wide section line easement within Lot 1, Block 5, Tazlina Hill Subdivision located in Section 16, T.3N., R.1W., CRM, AK.

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 pm on February 4, 2013. **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 3-161; 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).

Notice is hereby given that DNR, under the authority of AS 40.15.305 shall hold a public hearing to gather information and to obtain public input regarding the proposed section-line easement vacation. The hearing is scheduled to be held at the DMLW at the above address at 10 am on February 6, 2013. Persons attending or not attending the public hearing may submit comments in writing as noted above.

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

Individuals with disabilities, who require special accommodations, should call TDD (907) 269-8411 by 5 PM, February 4, 2013.