

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

Preliminary Decision

**Petitioners: Mental Health Trust Land Office
State of Alaska, Department of Natural Resources, Division of Mining, Land & Water**

**Right-of-Way & Public Utility Easement Vacation & Relocation
and the Replat of Record Boundary Lines**

EV-3-281

Petitioned Action:

The proposed action consists of vacating those portions of the 60-foot wide Nanny Bay Road Right-of-Way (ROW) and 20-foot wide Public Utility Easement (PUE) adjoining or within, as applicable, Tract D Parcel 1, Tract D Parcel 2, and Tracts G & H of Alaska State Land Survey No. 79-181 (Plat 80-34) and Tracts M-2 and M-3 of Alaska State Land Survey No. 2006-73 (Plat 2009-6); relocating said ROW and PUE to the more constructible location as depicted in Attachment A; and replatting (eliminating) record boundary lines. This action lies in Section 35, T73S, R84E, CRM.

The reason cited by the applicant for the ROW and PUE vacations: "A 60' wide public right-of-way will be dedicated in a more constructible location and will connect with the existing rights-of-way east and west of the proposed action. Two 20' wide public utility easements will be dedicated to provide continuous unbroken connections to the existing utility easement."

Legal Authority:

AS 29.03.030, AS 38.05.035(e), AS 38.05.945, AS 40.15.070, AS 40.15.300, 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:

The DNR Survey Case File EV-3-281 constitutes the administrative record used for the basis of this decision.

Borough:

The proposed action is located within the Unorganized Borough (UoB).

State Easement Interest:

A dedicated ROW and PUE exists within ASLS 79-181 and ASLS 2006-73 (See Discussion 1 on page 3).

Underlying Interest:

The State of Alaska DNR and the Mental Health Trust Land Office own the estate underlying the SLEs proposed for vacation.

Alternate Route:

The proposed alternate route consists of the to be dedicated 60' ROW and two 20' PUEs, as depicted on Attachment A.

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:

At the present time the portion of the ROW proposed to be vacated is unconstructed. In addition, there are no existing utilities within the PUE proposed to be vacated. DMLW, Survey Section has no known information that vehicles, pedestrians or other public interests have been or are currently using the 60' ROW proposed to be vacated. A field inspection was not conducted.

Practicality of Use:

The portion of ROW proposed to be vacated is located in challenging terrain and is unconstructed. Sufficient access will exist via to be dedicated ROW and PUE, which will continue to provide equal or better access to adjacent lands.

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 general circulation. The notice will be sent (certified) to property owners within 500 feet of the subject land, as well as other affected individuals and agencies. The post office in Hollis 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:

Initial Agency review of the proposed action began on September 28, 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 East Regional Office (SERO), 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 the ROW & PUE:

- a. The Nanny Bay Road ROW and the Public Utility Easement were platted and dedicated to public use by said plats of ASLS 79-181 and the plat of ASLS 2006-73.
2. Pursuant to 11 AAC 61.065, the proposed alternate route is equally useable and will be adequate to satisfy all present and 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. Dedication of the proposed ROW and PUE reroutes.
- 3. Approval of a State Platting Resolution.
- 4. A final plat (owner signed/surveyor sealed mylar) 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.
- 5. Submittal of a Certificate to Plat current within 90-days

Recommendation:

Based on our findings, the applicant meets DNR's requirements to vacate the subject ROW and PUE 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

26 July 2018

 Date

Approved by:



 Gwen M. Gervelis, PLS
 Chief, Survey Section

7/26/2018

 Date

PUBLIC NOTICE:

**Notice of Preliminary Decision
Right-of-Way and Utility Easement Vacation
EV-3-281**

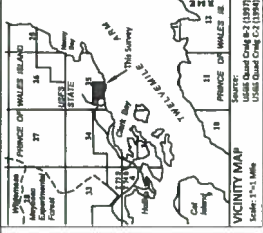
Per 11 AAC 51.065, the Department of Natural Resources, Division of Mining, Land and Water has made a Preliminary Decision giving contingent approval to a petition proposing to vacate & realign the 60' Nanny Bay Road Right-of-Way and 20' Public Utility Easement adjoining or within Tract D Parcel 1, Tract D Parcel 2, and Tracts G & H of ASLS 79-181 (Plat 80-34) and Tracts M-2 & M-3 of ASLS 2006-73 (Plat 2009-6) and replatting (eliminating) record boundary lines. This action lies in Section 35, T73S, R84E, 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 September 10, 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-3-281; 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.

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 action noted above. The hearing is scheduled to be held at the DMLW at the above address at 12:00 pm on September 11, 2018. 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.

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



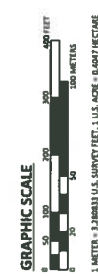
EV-3-281 LEGEND

- PUBLIC RIGHT-OF-WAY PROPOSED TO BE VACATED
- PUBLIC UTILITY EASEMENT PROPOSED TO BE VACATED
- PROPOSED ALTERNATE PUBLIC RIGHT-OF-WAY TO BE DEDICATED
- EXISTING PUBLIC RIGHT-OF-WAY
- PROPOSED PUBLIC UTILITY EASEMENT TO BE DEDICATED
- RECORD BOUNDARY LINE PROPOSED TO BE ELIMINATED/REPLACED

LEGEND

- BLAZED MONUMENT OF RECORD
- PRIMARY MONUMENT OF RECORD
- SECONDARY MONUMENT OF RECORD
- PRIMARY MONUMENT TO BE SET
- SECONDARY MONUMENT TO BE SET
- PUBLIC RIGHT-OF-WAY (ROW) PROPOSED TO BE VACATED
- PUBLIC UTILITY EASEMENT (PUE) PROPOSED TO BE VACATED
- RECORD BOUNDARY LINE PROPOSED TO BE ELIMINATED/REPLACED
- PUBLIC ACCESS EASEMENT
- TO BE DEDICATED TO THE PUBLIC BY THE PLAN
- BLOCK NUMBER

Preliminary



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| DATE OF SURVEY: RECORDING: ENGINEERING: | SUPERVISOR: |
| DEPARTMENT OF NATURAL RESOURCES DIVISION OF MINING, LAND & WATER ANCHORAGE, ALASKA | |
| ALASKA STATE LAND SURVEY No. 2017-27 CONCEPTUAL PLAN OF SURVEY Clark Bay View Subdivision, Phase I | |
| A SUBDIVISION AND REPEAT OF TRACTS 6 & H, ALASKA STATE LAND SURVEY No. 79-381 AND TRACTS M & N-3, ALASKA STATE LAND SURVEY No. 2006-73 | |
| PUBLIC RIGHT-OF-WAY AND UTILITY EASEMENT VACATIONS CREATING LOTS 1-3, BLOCK 1, LOTS 1-11, BLOCK 2 AND TRACT A CONTAINING ACRES MORE OR LESS | |
| LOCATED WITHIN PARTIALLY SURVEYED SECTION 35, TOWNSHIP 73 SOUTH, RANGE 84 EAST COPPER RIVER MERIDIAN, ALASKA KETCHIKAN RECORDING DISTRICT | |
| DRAWN BY: GCH | APPROVAL RECORDING NUMBER: |
| DATE: Aug 16, 2017 | APPROVED SURVEY ENGINEER: |
| SCALE: 1"=100' | FILE NO: ASL-20170027 // EV-3-281 |

