

**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 and Contract Administration Services**

Section Line Easement Vacation

EV-3-243

Petitioned Action:

The proposed action consists of vacating the 50' section-line easements (SLEs) lying within Lots 12, 14, & 15, US Survey 4584, Sections 2 & 3, T7N, R8W, CRM, as depicted in Attachment A.

The reason cited by the applicant: "The section line easements run through the middle of existing government 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 19.30.410, 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-3-243 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 properties 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 the 30 foot wide Pedestrian Access and Utility Easements dedicated within Lots 3, 4, 5, 7, 9, 10, 12, 14 & 15, US Survey 4584 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:

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 cross a narrow peninsula at the very north west end of a large island in Susitna Lake. Its entire length from water, thence across said peninsula to water, including that portion not being vacated, is approximately 1650 feet. This is an isolated segment of section-line easement. Sufficient public access to adjacent and adjoining parcels exists via the public waters of Susitna Lake. Alternate public access will be reserved and/or dedicated.

Agency Review:

Initial Agency review of the proposed action began on February 24, 2016 and concluded May 26, 2016. 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 2 & 3, T7N, 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. 4584, embracing Lots 1 to 16 inclusive, was accepted by the Chief, Division of Engineering on September 16, 1965. On this date said Lots 1-16 became appropriated for future application pursuant to the Act of June 1, 1938 (52 Stat 609); the Small Tracts Act. Said US Survey overlaps the protracted section line common to said Sections 2 & 3.
 - The Rectangular Survey Plat for Township 7 North, Range 8 West, Copper River Meridian, Alaska was accepted by the BLM on March 6, 1978.
 - Since the subject lands were appropriated 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 50-83-0200 on June 21, 1983. **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. Additional access will be protected by easements to be dedicated and that are adequately wide to satisfy all present and reasonable foreseeable uses. Continued access to adjacent lands is ensured via to be dedicated easements and via water access from Susitna Lake.

3. Pursuant to 11 AAC 51.065(e)(1), the department will give consideration to the recommendations of the MSB Planning Commission 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.
2. Comply with MSB's conditions of approval unless waived by the Director, DMLW.

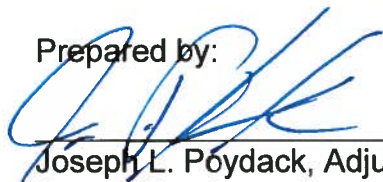
3. A final plat (owner signed / surveyor sealed Mylar) must be submitted to DNR within two years from the date of approval of the Final Decision unless extended by DMLW, Survey Section.

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 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).

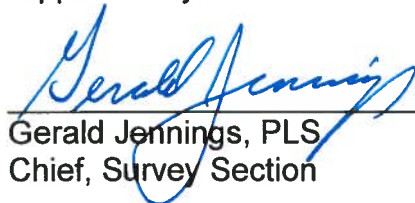
Prepared by:



Joseph L. Poydack, Adjudicator

11 July 2016
Date

Approved by:



Gerald Jennings, PLS
Chief, Survey Section

July 11, 2016
Date

PUBLIC NOTICE:

**Notice of Preliminary Decision
Section Line Easement Vacation
EV-3-243**

Per AS 19.30.410, 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 portions of the 50-foot section line easements lying within US Survey 4584, Sections 2 & 3, T7N, 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 <http://notes3.state.ak.us/pn/>. All comments must be received in writing at DMLW by 5:00 p.m. on August 26, 2016. **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-3-243; 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.

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

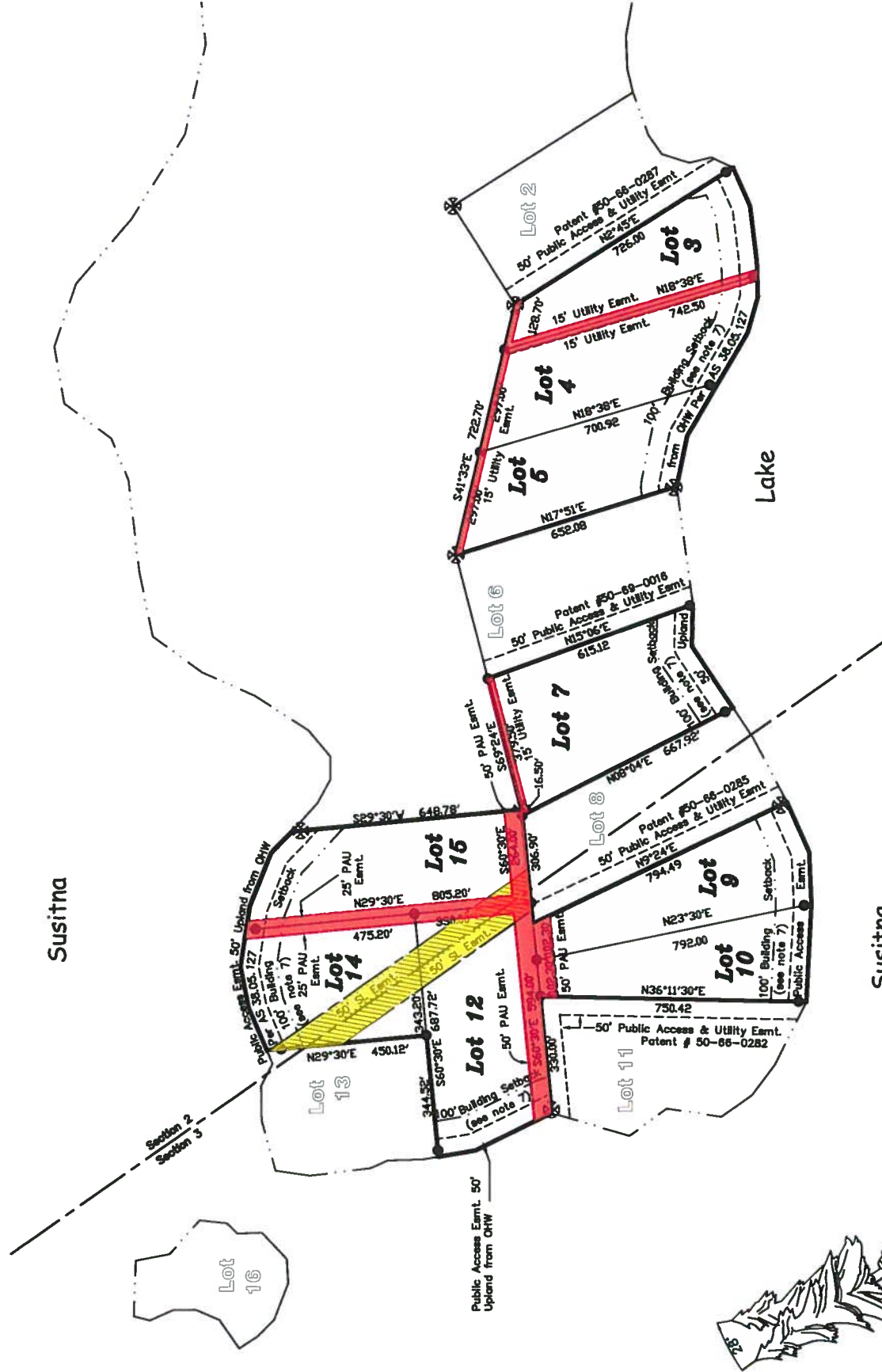
Those with audio impairments may call Anchorage DNR Public Information Center, 10-5, M-F, TDD#269-8411.

Lake

Susitna

Lake

Susitna



EV 3-243 Attachment A

Sections 2 & 3, T7N, R8W, CRM

 SLEs Proposed to be Vacated

 Easements to be Dedicated