

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

Preliminary Decision

Petitioner: City of Gustavus on behalf of the State of Alaska

Section Line Easement Vacation

EV-3-263

Petitioned Action:

The proposed actions consist of vacating that portion of the north 17-foot of the 50-foot wide section line easement (SLE) lying west of the easterly limits of the to be dedicated 66-foot wide Parker Road right-of-way easement within Government Lot 8, Section 7, T40S, R59E, CRM; as depicted in Attachment A.

The reason cited by the applicant for the SLE vacation: "To avoid encroachment and provide access to the Fire Hall Building."

Legal Authority:

AS 19.10.010, 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.

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-3-263 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 section-line easement exists within the subject property pursuant to AS 19.10.010. (See Discussion 1 on page 3).

Underlying Interest:

The State of Alaska owns the estate underlying the SLEs proposed for vacation (see Discussion 3 on page 3).

Alternate Route:

The proposed alternate route consists of the constructed Gustavus Road ROW and the remaining SLEs, 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:

A 30-foot wide right-of-way contiguous with the section line in adjoining Section 18 was dedicated by the plat of Happy Acres Subdivision. The constructed Gustavus Road lies partially within this ROW and partially within the adjoining 50-foot wide SLE in Section 7. The public currently uses the constructed Gustavus Road to access lands to the east and west. DMLW, Survey Section has no known information that vehicles, pedestrians or other public interests have been or are currently using that 17-foot wide portion of the SLE proposed to be vacated. A field inspection was not conducted.

Practicality of Use:

The 17-foot wide portion of SLE proposed to be vacated may no longer be needed to insure public access to adjacent lands. Together the existing 30-foot wide right-of-way in Section 18 and the "to be dedicated" 33-foot wide right-of-way overlapping the remaining portion of SLE in Section 7 provide a 63-foot wide public access corridor. The constructed road lies within this corridor. Sufficient access exists via Gustavus Road, 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 statewide 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 Gustavus 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 November 3, 2016 and concluded December 7, 2016. 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. In an email dated December 5, 2016, ADF&G wished to retain the SLE east of the Parker Road right-of-way (ROW). SERO agreed in an email dated March 30, 2017, stating that it would not affect the planned conveyance to the City of Gustavus.
2. All other agencies submitted comments of non-objection.
3. No other comments or objections on the proposed action were received.

Discussion:

1. Determination of the existence of Section-Line Easements:

The U.S. rectangular survey plat for Township 40 South, Range 59 East, Copper River Meridian, Alaska was accepted by the GLO on March 8, 1922.

- a. The lands underlying the portion of the subject section-line easements were conveyed by BLM to the State of Alaska by Federal Patent 1221624 on August 1, 1961. **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 is protected by the constructed Gustavus Road ROW. In addition, the 33' wide portion of the SLE not being vacated will be dedicated as a public ROW. Pursuant to 11 AAC 51.065(g)(4)(C), the reduction in width is adequately wide to satisfy all present and reasonable foreseeable uses. Continued access to adjacent lands is ensured by the remaining unconstructed SLEs and constructed rights-of-way.
3. AKDNR currently owns the lands underlying the subject SLE (Government Lot 8); however, the City of Gustavus has selected portions of said Lot 8 for future conveyance as a portion of their Municipal Entitlement allotment. Since the lands selected are encumbered with a section-line easement, and in accordance with Technical Amendment #1 to the Final Finding & Decision (ADL 108131) the City has submitted a petition and has proposed that a portion of the SLE be vacated prior to the municipal entitlement/public & charitable conveyance.
4. If an underlying RS2477 SLE (33') exists pursuant to prior state/territory legislation, it is not being vacated by this action.

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 Certificate to Plat current within 90-days

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:

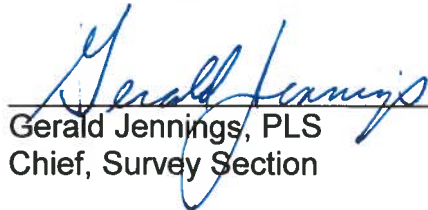


Joseph L. Poydack, Adjudicator

20 APRIL 2017

Date

Approved by:



Gerald Jennings, PLS
Chief, Survey Section

April 20, 2017

Date

PUBLIC NOTICE:

**Notice of Preliminary Decision
Section Line Easement Vacation
EV-3-263**

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 to vacate a portion of the section-line easement lying within Government Lot 8, Section 7, T40S, R59E, 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 June 5, 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-3-263; 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 June 6, 2017. 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.

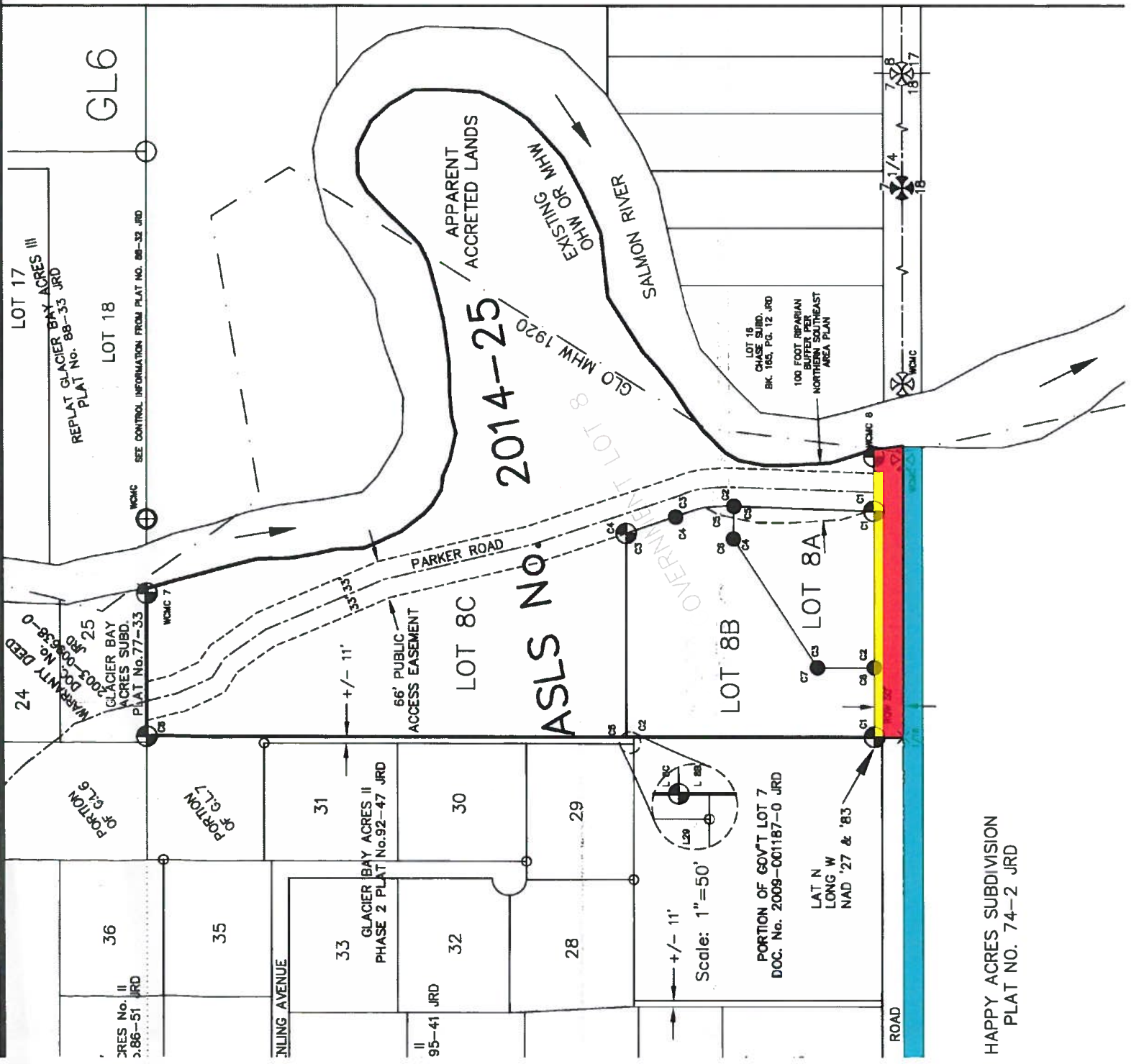
Those with audio impairments may call Anchorage DNR Public Information Center, 10-5, M-F, TDD#269-8411.

EV 3-263 Attachment A

Section 7, T40S, R59E, CRM



- 17' Portion of 50' SLE Proposed to be Vacated
- Remaining SLE
- Existing Dedicated ROW



HAPPY ACRES SUBDIVISION
PLAT NO. 74-2 JRD