

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

Preliminary Decision

Petitioners: Ben Rasley, Dan Sheridan & Jeffery Ballek

Section Line Easement Vacation

EV-3-268

Petitioned Action:

The proposed actions consist of vacating the section-line easements (SLEs) lying within Lot 3, Tract D (Instr. 126.086), Lot 2, Tract C (Plat 72-31 FRD) and the North 184.63' Tract B, Endicott Homestead Subdivision (Inst. No. 119.816). This action lies in Section 13, T1S, R1E, FM and Section 18, T1S, R2E, FM, as depicted in Attachment A.

The reason cited by the applicant: There are two encroachments from buildings and one septic system into the SLE. This impacts any future development or sale.

Legal Authority:

AS 19.10.010, AS 19.30.410, AS 38.05.035, 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-3-268 constitutes the administrative record used for the basis of this decision.

Borough:

The proposed action is located within the Fairbanks North Star Borough (FNSB).

State Easement Interest:

33-foot wide section-line easements exist each side of the section line within the subject properties pursuant to Chapter 19, SLA 1923. (See Discussion 1, Page 3).

Underlying Interest:

The petitioners own the estates underlying the SLEs proposed for vacation.

Alternate Route:

The proposed alternate access is via the partially constructed 60-foot and 40-foot wide Endecott & Levado Avenue rights-of-way, the constructed 135-foot plus wide Badger Road right-of-way and the remaining SLEs. Public access continues to be available to adjoining & adjacent parcels. See Discussion 3 on page 3.

Land Management Policies:

1) Pursuant to AS 19.30.410 the Department of Natural Resources, the Department of Transportation and Public Facilities, or another agency of the state may not vacate a right-of-way acquired by the state under former 43 U.S.C. 932 unless:

- a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses.

2) 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:

This action lies within a populated area within the greater Fairbanks/North Pole metropolitan area. Sufficient constructed public access exists and is currently being used by the public in lieu of the subject SLE's. A field inspection was not conducted; however, using satellite imagery no evidence of public use was noticed.

Practicality of Use:

Constructed public access exists via the Badger Road and Endecott & Levado Avenue rights-of-way. Said ROW's provide public access to all parcels affected by the proposed vacation. Said access is superior to, and alleviates the need for access via the SLE's.

Agency Review:

Initial Agency review of the proposed action began on February 10, 2017 and concluded April 3, 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 – Northern Regional Office (NRO), 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 Section-Line Easements:**

- a. The Rectangular Survey Plat for Township 1 South, Range 1 East, Fairbanks Meridian, Alaska was approved by the General Land Office on October 9, 1913.
- b. The Rectangular Survey Plat for Township 1 South, Range 2 East, Fairbanks Meridian, Alaska was approved by the General Land Office on July 13, 1921.
- c. The lands underlying the SLEs proposed to be vacated, were conveyed into private ownership by Patent No. 1126720. The date of entry (application filed) according to the case file abstract for BLM case file AKF 005708 was May 31, 1944. A review of the BLM Historical Index verified that the lands described above were unappropriated and unreserved 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. The proposed alternate access is reasonably comparable and meets the requirements for vacation of a portion of the subject section-line easement pursuant to AS 19.30.410 and 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. Continued access to adjacent lands is ensured by the remaining unconstructed SLEs and dedicated ROWs.

3. Badger Road is a DOT&PF managed right-of-way (*AK Project No. RS-0620(6)/60379*), that in the vicinity of the proposed vacation is at least 135-feet wide (refer to sheets 23 & 24 of 44 of Plat 2008-28 FRD). The Endecott Avenue and Levado Avenue rights-of-way were platted and dedicated by the plat of Endecott Homestead Subdivision (Inst 119-816 FRD) as 60-foot wide Willow Street and Birch Street rights-of-way respectively. Said ROW's were later renamed as noted above and the width of a portion of said Birch Street (now Levado Ave.) was reduced to 40-feet.

4. That portion of SLE underlying the Levado Avenue right-of-way; although not clearly identified as proposed to be vacated in the petition or on the preliminary vacation plat received with the petition, will also be vacated by this action. Per a conversation on April 17, 2017 with the Platting Officer (FNSB), he stated that when the proposed action was reviewed and given contingent approval by the FNSB Platting Board at their August 19, 2015 meeting the intent was/is to vacate the entire segment of SLE, including that portion underlying Levado Avenue and that there would be "...no remnant isolated portion [of SLE left remaining] ...".

5. Pursuant to 11 AAC 51.065(e)(1), the department will give consideration to the recommendations of the FNSB 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. 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. The advertising cost for Public Notice is at the expense of the applicant.
2. Comply with FNSB'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 vacations 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:

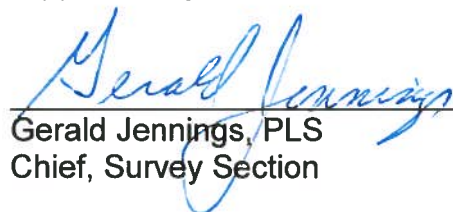


Joseph L. Poydack, Adjudicator

3 May 2017

Date

Approved by:



Gerald Jennings, PLS
Chief, Survey Section

May 3, 2017

Date

PUBLIC NOTICE:

**Notice of Preliminary Decision
Section Line Easement Vacation
EV-3-268**

Per AS 19.30.410, the Department of Natural Resources, Division of Mining, Land and Water has made a Preliminary Decision giving contingent approval to a petition vacating the section-line easements lying within Lot 3, Tract D, Lot 2, Tract C and the North 184.63' Tract B, Endicott Homestead Subdivision. This action lies in Section 13, T1S, R1E, FM and Section 18, T1S, R2E, FM.

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 17, 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-3-268; 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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Section 13, T1S, R1E, FM

