

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

Preliminary Decision

Petitioner: John & Pauline Mills

Section Line Easement Vacation

EV-3-258

Petitioned Action:

The proposed action consists of vacating a portion of the 33 and 50-foot wide section-line easements (SLEs) lying within Tract I-1& I-2, Davis-Mills Subdivision (Plat 2015-95, Kenai Recording District), Sections 3 & 10, T2N, R12W, SM, as depicted in Attachment A.

The reason cited by the applicant: "House is partially in the section-line easement."

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-3-258 constitutes the administrative record used for the basis of this decision.

Borough:

The proposed action is located within the Kenai Peninsula Borough (KPB).

State Easement Interest:

33 and 50-foot wide section-line easements exist within the subject property pursuant to Chapter 19, SLA 1923 and AS 19.10.010. (See Discussion 1).

Underlying Interest:

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

Alternate Route:

The proposed alternate access is the constructed 60' Carol Road and Toombs Avenue rights-of-way (ROWs) and a to be dedicated 100' ROW. Public access to adjoining & adjacent parcels is not negatively affected by this action.

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:

A field inspection was not conducted. The subject SLE is unconstructed. It is unknown whether vehicles, pedestrians or other public interests have been or are using those portions of the SLE proposed to be vacated.

Practicality of Use:

The SLEs proposed to be vacated run along mostly level terrain and pass partially through wetlands. In addition, there is a home partially encroaching within the 50' SLE in Section 10. Sufficient dedicated public access exists and/or will be dedicated that provides access to the adjoining lands.

Agency Review:

Initial Agency review of the proposed action began on August 24, 2016 and concluded July 25, 2017. Agencies notified included Department of Transportation/Public Facilities (DOT/PF) Central 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. Initial DOT/PF & SCRO concerns of connectivity were resolved by the petitioner agreeing to a dedication of a 100' ROW along the east boundary of Tract I-2.
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 the Section-Line Easements:**

- a. The Rectangular Survey Plat for Township 2 North, Range 12 West, Seward Meridian, Alaska was approved by the General Land Office on June 7, 1921 and accepted on January 6, 1922.
- b. A review of the BLM Historical Index confirmed that the lands described below in "c", "d" & "e" were unappropriated and unreserved on April 6, 1923. Research verified that the subject lands were included in lands withdrawn for the Chugach National Forest by Proclamation No. 852 dated February 23, 1909. This National Forest withdrawal remained in effect until Proclamation No. 1519 dated April 16, 1919 eliminated certain lands from Chugach National Forest and restored said lands – including the subject lands – to entry. The subject lands were restored to homestead entry under applicable federal laws 84 days after the date Proclamation 1519 was signed (April 16 + 84 days = July 9, 1919).
- c. The lands underlying the SLE proposed to be vacated in Gov't Lot 8, Section 3, were conveyed into private ownership by Patent No. 1216185. The date of entry (application filed) according to the case file abstract for BLM case file AKA 041002 was January 6, 1958. **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).
- d. The lands underlying the SLE proposed to be vacated in NE1/4 of Section 10 were conveyed to the State of Alaska by US Patent 1217603, issued March 6, 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 51.065, editor's note #7).
 - i. A 33-foot wide SLE exists underlying the 50' SLE noted above pursuant to Ch. 19, SLA 1923. It will also be vacated by this action.
- e. The lands in SE1/4SE1/4 Section 3 immediately east of the proposed action were conveyed to the State of Alaska by US Patent 1225972, issued March 28, 1962. **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 51.065, editor's note #7).

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 adequately wide to satisfy all present and reasonable foreseeable uses. Continued access to adjacent lands is ensured by the remaining unconstructed SLEs, dedicated ROWs and a 100' to be dedicated ROW.

3. Pursuant to 11 AAC 51.065(e)(1), the department will give consideration to the recommendations of the KPB Platting Board regarding this action when a copy of the Approved Minutes are received at DNR.

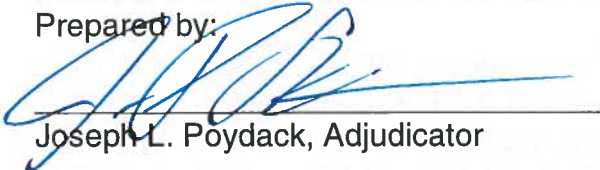
Approval of the proposed action is contingent upon the following conditions:

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. Dedication of the 100' ROW as depicted on Attachment A.
3. Comply with KPB'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:

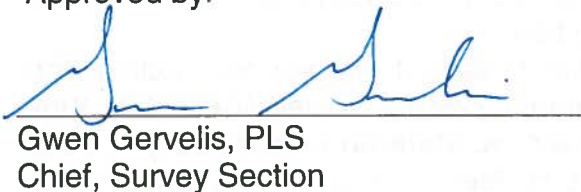
Based on our findings, the applicant meets DNR's requirements to vacate the subject section-line easement. The proposed vacation may be in the state's best interest. Therefore, the Division of Mining, Land and Water, Survey Section recommends approval of this action and may proceed with adjudication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

Prepared by:


Joseph L. Poydack, Adjudicator

27 December 2017
Date

Approved by:


Gwen Gervelis, PLS
Chief, Survey Section

December 28, 2017
Date

PUBLIC NOTICE:

**Notice of Preliminary Decision
Section Line Easement Vacation
EV-3-258**

Per AS 19.30.410 & 11 AAC 51.065, the Department of Natural Resources, Division of Mining, Land and Water has made a Preliminary Decision (PD) giving contingent approval to a petition vacating a portion of the 33 and 50-foot wide section-line easements lying within Tracts I-1& I-2, Davis-Mills Subdivision (Plat 2015-95, KRD), Sections 3 & 10, T2N, R12W, SM.

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 February 23, 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-3-258; 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.

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EV 3-258 Attachment A

