

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

Preliminary Decision

Petitioners: Peter & Kathleen Zuyus, Richard Koskovch & Spotty Merle, LLC

Section Line Easement Vacation

EV-3-299

Petitioned Action:

The proposed action consists of vacating the 33-foot wide section-line easements (SLEs) lying within Lot 25, Gruening Vista 1978 Addition (HM 78-49), portions of the S1/2SW1/4 & NW1/4SW1/4 of Section 2, Lot 34, Gruening Vista 1986 Addition No. 2 (HM 86-110), Tract A, Gruening Vista 1993 Subdivision (HM 93-61) and Lot 43, Gruening Vista 1998 Addition Amended (HM 99-12), as depicted in Attachment A. This action lies in Sections 2 & 3, Township 6 South, Range 13 West, Seward Meridian.

The reasons cited by the applicant:

- This particular section line easement terminates in a residential subdivision. There is no need for any access by individuals other than residents, who already have improved road access. Safety and security are paramount to the community. This section line easement only goes to private property. Allowing random individual criminal elements unfettered access to residential homes, the owners of which feel is unconscionable. One of the resident families has had serious stalking and threats of potential criminal trespass currently and in the past. The section line easement is being used as a means of enforcing those threats. Approval of this easement vacation will substantially reduce those threats and potential for criminal activity. All affected parcel owners are under a heightened state of alert while the section line is open and the threats viable.

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-3-299 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-foot wide section-line easement exists within the subject properties pursuant to Chapter 19, SLA 1923. (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' Dorothy Drive Right-of-way (ROW) dedicated to public use by said Gruening Vista 1978 & 1998 Additions, the 33' Birch Lane ROW dedicated to public use by Amended Birch Side Acres Subdivision Unit 4 (Plat 83-83), the remaining unconstructed SLEs and "equal in width" Drainage and Utility Easements to be dedicated overlapping the SLEs being vacated. Public access to the adjoining and 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 conducted on November 7, 2018. The subject SLEs are unconstructed and no utilities were visible within those portions proposed to be vacated. However; there is evidence of light foot traffic (recently created foot trail) on the southerly 150' portion of the proposed vacation.

Practicality of Use:

The SLEs proposed to be vacated run along varied terrain, including slopes exceeding 50% grade. Sufficient dedicated public access exists providing access to all adjacent parcels.

Agency Review:

Initial Agency review of the proposed action began on October 23, 2018 and concluded February 23, 2019. 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. Initially DOT/PF objected to the vacation citing concerns with drainage and future utility needs. In a February 20, 2019 letter, DOT/PF withdrew their objection but again citing concerns with drainage and potential future utility needs. DNR agreed and requested the petitioners dedicate a Drainage and Utility Easement equal in width to the SLE being vacated. In a phone call on February 22, 2019, with the petitioner's representative, the petitioner agreed to the dedication of said easement.
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 6 South, Range 13 West, Seward Meridian, Alaska was approved on June 28, 1918 and accepted by the General Land Office on July 15, 1918.
 - b. The lands underlying the SLEs proposed to be vacated were conveyed into private ownership by:
 - i. Patent No. 1127414. The date of entry (application filed) according to the case file abstract for BLM case file AKA 012252 was May 20, 1948; and,
 - ii. Patent No. 1116495. The date of entry (application filed) according to the case file abstract for BLM case file AKA 8747 was February 10, 1937.
 - c. A review of the BLM Historical Index confirmed that the lands described above in "b" 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).
 - d. **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 adequately wide to satisfy all present and reasonable foreseeable uses. Continued access to adjacent lands is ensured by the to be

dedicated drainage and utility easement, dedicated and constructed ROWs and the remaining unconstructed SLEs in the vicinity.

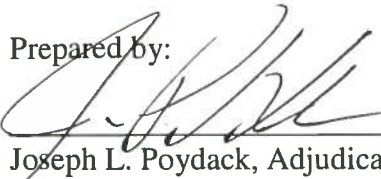
3. Pursuant to 11 AAC 51.065(e)(1), the department will give consideration to the recommendations of the KPB Platting Board regarding this action when a copy of the Approved Minutes are received at DNR.

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 Drainage and Utility Easement.
3. Comply with KPB's conditions of approval unless waived by the Director, DMLW.
4. 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.
5. 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.

Prepared by:


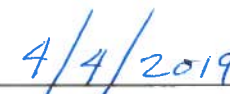
Joseph L. Poydack, Adjudicator



Date

Approved by:


Gwen M. Gervelis, PLS
Chief, Survey Section



Date

PUBLIC NOTICE:

**Notice of Preliminary Decision
Section Line Easement Vacation
EV-3-299**

Per AS 19.30.410 and 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 the 33-foot wide section-line easements lying within Lot 25, Gruening Vista 1978 Addition (HM 78-49), portions of the S1/2SW1/4 & NW1/4SW1/4 of Section 2, Lot 34, Gruening Vista 1986 Addition No. 2 (HM 86-110), Tract A, Gruening Vista 1993 Subdivision (HM 93-61) and Lot 43, Gruening Vista 1998 Addition Amended (HM 99-12). This action lies in Sections 2 & 3, Township 6 South, Range 13 West, Seward Meridian.

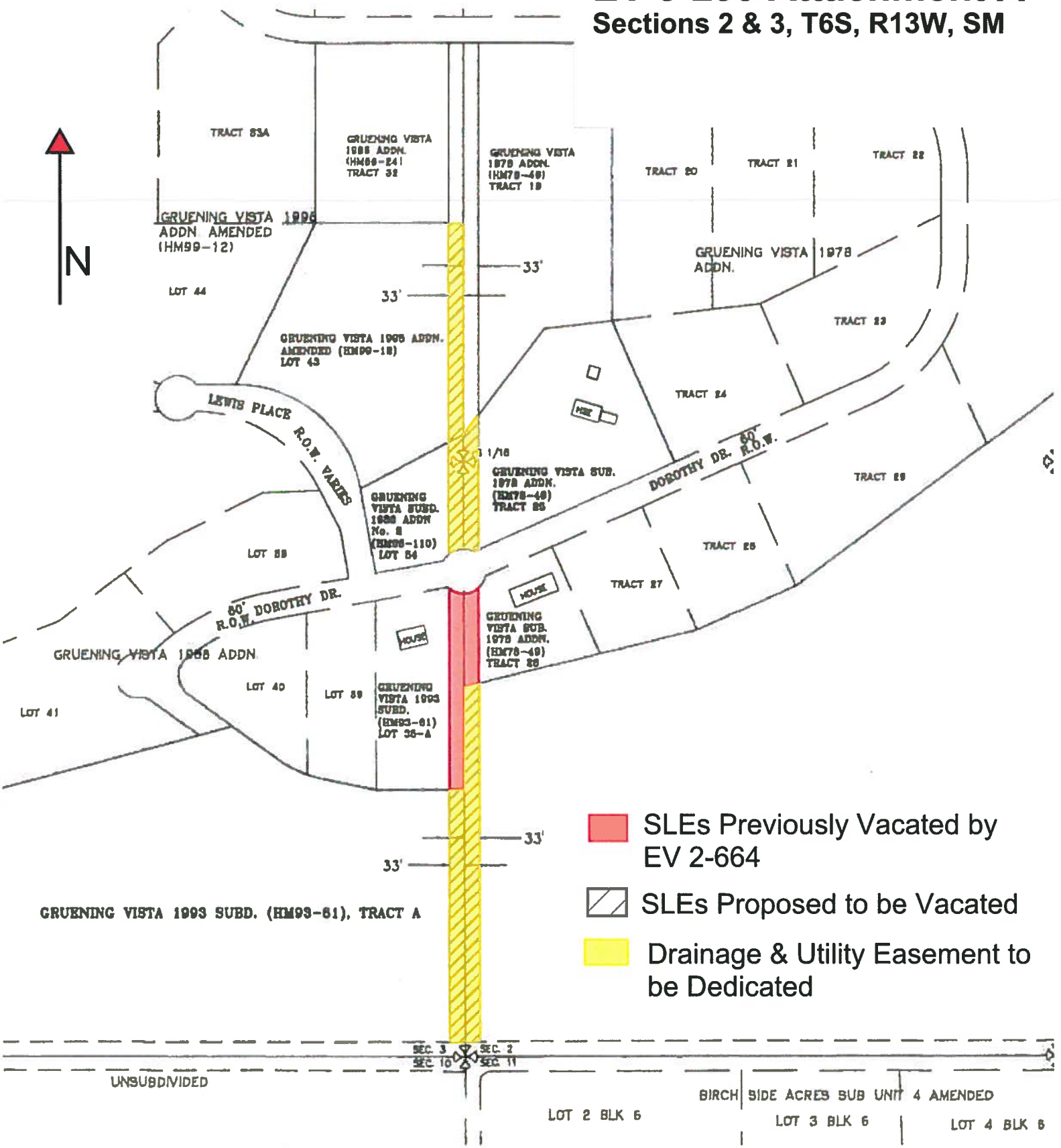
The public is invited to comment on the PD. Copies are available from DMLW, 550 W. 7th Avenue, Suite 650, Anchorage, AK 99501-3576 or <https://aws.state.ak.us/OnlinePublicNotices/Login.aspx>. All comments must be received in writing at DMLW by 5:00 p.m. on May 9, 2019. **To be eligible to appeal, one 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-3-299; 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.

EV 3-299 Attachment A

Sections 2 & 3, T6S, R13W, SM



- SLEs Previously Vacated by EV 2-664
- SLEs Proposed to be Vacated
- Drainage & Utility Easement to be Dedicated