

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

Preliminary Finding & Decision

Petitioner: Mary Dreifuerst

Section Line Easement Vacation

EV-3-302

Petitioned Action:

The proposed action consists of vacating the 50-foot wide section-line easements (SLEs) lying within USS 14477 as depicted in Attachment A. This action lies in sections 27 & 34, Township 5 North, Range 4 West, Seward Meridian.

The reasons cited by the applicant:

- House and other structures are located within the easement.

Legal Authority:

AS 19.10.010, 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-3-302 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:

50-foot wide section-line easement exists within the subject properties pursuant to AS 19.10.010 (See Discussion 1).

Underlying Interest:

The petitioner owns the estate underlying the SLEs proposed for vacation.

Alternate Route:

The proposed alternate access is the constructed Sterling Highway Right-of-way (ROW). Public access to the adjoining and adjacent parcels is not negatively affected by this action.

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 field inspection was not conducted; therefore, it is unknown whether vehicles, pedestrians or other public interests have been or are currently using those portions of the SLEs proposed to be vacated. However, due to the nature of the section line that these 50' SLEs are attached to (*i.e. being an unconstructed protracted [unsurveyed] section line, located in a remote area, more than two miles from the nearest monumentation that controls the location of this section line*) it is highly unlikely that the general public or any public interests would know the exact location of this 100-foot wide SLE corridor. The subject SLEs are unconstructed.

Practicality of Use:

Section-line easements along protracted section lines are not practical to use for legal public access until the location of the section line has been determined by an official survey. To avoid trespass issues the exact location of the easement must be known on the ground before it can be used. In addition, pursuant to Footnote 15 of the 1969 Opinions of the Attorney General No. 7, "a section line right-of-way [SLE] attaches to the protracted section line subject to subsequent conformation with the official public land survey" (emphasis added). Only then do public access rights pursuant to AS 19.10.010 attach to the section line.

The subject SLE's attached to the protracted section line in accordance with AS 19.10.010 (*see the Discussion Section below*) when U.S. Survey No. 14477 was conveyed directly to the State of Alaska prior to conveyance to the petitioner. USS 14477 is an inholding currently surrounded by the Chugach National Forest. Its southerly boundary is also contiguous with the northerly bounds of the Sterling Highway right-of-way; therefore, the parcel has legal access. Lands in the NW 1/4 of said Section 34 were selected by the State under NFCG 52 but have not received Tentatively Approval yet. The SLEs proposed to be vacated are approximately 100' to 200' north of, are parallel – to some extent – to the Sterling Highway, and they dead-end at the boundaries of USS 14477. SLE's do not exit within the national forest; therefore, this isolated 300 +/- foot segment of SLE appears to serve no practical purpose. Sufficient public access exists – via the highway right-of-way – to provide access to adjacent Chugach National Forest lands.

Agency Review:

Initial Agency review of the proposed action began on December 19, 2018 and concluded July 19, 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. 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 section-line common to Sections 27 & 34, T5N, R4W, SM was not surveyed by the Rectangular Survey Plat for Partially Surveyed Township 5 North, Range 4 West, Seward Meridian, Alaska accepted by BLM December 24, 1998 and officially filed on January 22, 1999. Said section line remains a protracted (unsurveyed) line.
 - b. AS 19.10.010 **Dedication of land for public highways** states in part “A tract 100 feet wide between each section of land owned by the state (emphasis added) or acquired from the state, and a tract four rods wide between all other sections in the state, is dedicated for use as public highways...”
 - c. The lands underlying the SLEs proposed to be vacated were conveyed to the State of Alaska by Patent No. 50-2018-0038 on January 31, 2018.
 - d. **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 is reasonably comparable and meets the requirements for vacation of a portion of the subject section-line easement pursuant to 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 Sterling Highway 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. Comply with KPB’s conditions of approval unless waived by the Director, DMLW.
3. Document the existence of an easement along the powerline, or dedicate an easement of sufficient width.

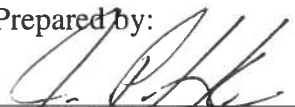
4. A final plat (owner signed / surveyor sealed Mylar) must be submitted to DNR within two years from the date of approval of the Final Decision unless extended by DMLW, Survey Section.

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:

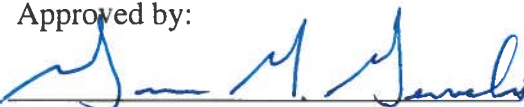


Joseph L. Poydack, Adjudicator

10/8/2019

Date

Approved by:



Gwen M. Gervelis, PLS
Chief, Survey Section

10/8/2019

Date

PUBLIC NOTICE:

**Notice of Preliminary Decision
Section Line Easement Vacation
EV-3-302**

Per 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 50-foot wide section-line easements lying within USS 14477 as depicted in Attachment A. This action lies in sections 27 & 34, Township 5 North, Range 4 West, Seward Meridian, Alaska.

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 November 11, 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-3-302; 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 3-302 Attachment A

Sections 27 & 34, T5N, R4W, SM

