

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

**Preliminary Decision
Petitioners: Spinell Homes
Section Line Easement Vacation
EV 3-368**

Petitioned Action:

EV 3-368 is in Wasilla approximately one mile north of the intersection of E. Bogard Road and N Bear St. The proposed easement vacation area is along the section line common to Sections 21 & 28 within the SW $\frac{1}{4}$ of Section 21 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T18N, R1E, S.M., Alaska. The petitioner is requesting the vacation of segments of the 50-foot section line easements within Tract A, Plat 2006-33, Palmer Recording District. The proposed section line easement vacation petition excludes the portion of the 50-foot SLE within Section 21 east of N. Experimental Drive extending to the eastern boundary of the project within proposed lot 37 on Attachment A. The section line easement area to remain is approximately 50 feet by 368 feet. The section line easement proposed for vacation is approximately 100 feet by 1320 feet and 50 feet by 954 feet, as depicted on Attachment A. Note, the SLE area being retained is further discussed in the Agency Review portion of the Preliminary Decision, Alaska.

The reasons for the section-line easement vacation as cited by the applicant: “The section line easement will greatly impede the properties development”.

Legal Authority:

AS 38.05.035, AS 38.05.945, 11 AAC 51.065, 11 AAC 51.025, 11 AAC 51.100, AS 19.10.010 and AS 19.30.410.

Administrative Record:

The DNR Survey Case File EV 3-368 constitutes the administrative record used for the basis of this decision.

Borough:

The proposed action is located within the Matanuska-Susitna Borough.

State Easement Interest:

50-foot wide State section-line easements exist along both sides of the section line common to Sections 21 & 28 within the SW $\frac{1}{4}$ of Section 21 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, Township 18 North, Range 1 East, Seward Meridian, pursuant to AS 19.10.010 (See Discussion 1).

Underlying Interest:

The petitioners own the estate underlying the 50-foot section line easements proposed for vacation.

Alternate Route:

The proposed alternate access is via Couloir Drive, Alpenglow Drive and N. Experimental Drive. These alternate 60-foot rights-of-way will be dedicated as a part of the proposed Horizon Estates Subdivision Phase 2-5 development. Once dedicated, these roads will connect N. Experimental Drive to N. Horizon View Drive, both of which have already been dedicated and constructed. A portion of Couloir Drive lies within the current SLE proposed to be vacated in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21 and NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 28, T18N, R1E, S.M., Alaska. Alpenglow Drive runs parallel to a portion of the 50-foot SLE proposed for vacation in Section 21. The surrounding streets that will feed into this neighborhood include Homebuilt Circle, dedicated by Plat 8-181, PRD, and N. Horizon View Drive.

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 conducted on Thursday April 27, 2023. All roads leading to the SLE site including, E. Bogard Road, N Greentree Street, E. Zephyr Drive, N Barbara Street, Diana Court, E. Homebuilt Circle and Experimental Drive have been cleared, constructed, and are well maintained. The section line easement proposed for vacation was identified upon arrival at the site. Our access was at the terminus of Experimental Drive. The field inspection confirmed the SLE area has been cleared. The snow and ice in the SLE were still considerable as of the date of the field inspection. A trail/pioneer road has been constructed in the SLE west of the terminus of N. Experimental Dr. The trail continues in the SLE for approximately 330-feet. It then winds in and out of the SLE before continuing North to connect with the platted and constructed portion of N. Horizon View Drive. This trail appears to be utilized by ATV's and pedestrians. The SLE terrain was fairly even with trees and hills to the immediate north and adjacent to backyards to the immediate south. Based on the site visit, the public is utilizing a portion of the SLE area proposed for vacation.

Practicality of Use:

N. Experimental Drive and N. Horizon View Drive have both already been dedicated and constructed. N. Horizon View Drive is a 60-foot right-of-way, dedicated by Plat 2006-33, PRD. This ROW abuts the northern portion of Tract A, Plat 2006-33, PRD (the project area). The southeast portion of the project area will extend the current terminus of N. Experimental Drive, a

50-foot right-of-way dedicated by Plat 84-181, PRD. The proposed right-of-way dedications for alternate access will connect N. Experimental Drive to N. Horizon View Drive, and maintain public access to section line easements to the west of the project area. The pedestrian traffic identified in the field inspection will be able to utilize the proposed alternate routes. The area of the easement vacation will not adversely affect land in other ownership nor will it negatively impact public access in this area once the new alternate routes are dedicated and constructed.

Agency Review:

Initial Agency review of the proposed action began on April 20, 2023 and concluded on December 22, 2023. 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 – Southcentral Regional Land Office (SCRO), Alaska Mental Health Trust Land Office (MHTLO) and DNR Division of Parks and Outdoor Recreation (DPOR).

Agency Comments:

Agency Review comments and responses were received as follows:

1. The following Agencies submitted comments of non-objection: ADFG, DPOR and DOT&PF.
2. An objection was submitted by SCRO. Their agency comment reads:

" As proposed, DNR DMLW SCRO objects to the vacation as proposed.

While the proposed alternative access identified as the cumulation of Couloir Dr., Alpenglow Dr., and N. Experimental Dr. (as identified on the attached Horizon_Prelim_4-21-23Streetnames.pdf) provides suitable alternative public access for that portion of the proposed Section Line Easement west of N. Experimental Dr., the Public Park Access at the west terminus of Breezewood Road which has been identified by the petitioner as the alternative access in lieu of that portion of the Section Line Easement east of N. Experimental Dr. is not suitable per 11 AAC 51.065. SCRO may provide revised comments if the petitioner is able to demonstrate that the Public Park Access at the west terminus of Breezewood Road will accommodate all the uses and rights of access as provided by the Section Line Easements as they currently exist.

Additionally, while correspondence from the petitioner has indicated that there will be 15' utility easements running parallel with and outside the platted rights of way, SCRO strongly recommends those utility easements to be depicted on any preliminary plats for this subdivision, to ensure that the rights of installation of utilities within a Section Line Easement are appropriately accounted for prior to any vacation that occurs for this Section Line Easement."

3. No other comments or objections on the proposed action were received.

Agency Review comment reconciliation negotiations occurred as follows:

A memo dated December 16, 2023, came in from the project surveyor, Tony Hoffman, PLS with The Boutet Company, Inc. The memo summarized the revised EV request conforming to the Agency Review objection submitted by the SCRO. In the memo Mr. Hoffman relayed the EV petition was being revised as follows:

“On behalf of the property owner (Spinell Homes Inc.) we are submitting this revised request for the vacation of the section line easements located in Sections 21 and 28, Township 18 N., Range 1 East of the Seward Meridian. The current legal description is Tract A, Horizon Estates – Phase 1, Plat 2006-33, Palmer Recording District.

These section line easements run east-west through phases 2-5 of the planned development known as Horizon Estates Subdivision. The project is located in Wasilla, near Niklason Lake, north of Bogard Road.

Our original request was to vacate the easement in its entirety throughout the subject property. However, after discussing the situation with Jay Rokos DNR Natural Resource Manager II today we agree that the section line easement that exists between Homebuilt Drive and the east boundary of the project should be retained by DNR. It will provide access to Government Lot 4, immediately adjacent to the project. The easement to be left in place is approximately 368 linear feet.”

Per our discussion, I have revised the preliminary plat to remove the vacation request for the 368’ stretch of the section line easement east of Homebuilt Drive (approx. 368’).”

On December 22, 2023, Jay Rokos, Natural Resource Manager II with the DNR, SCRO agreed the revised EV proposal retaining the SLE between N. Experimental Drive and the east boundary of the Horizon Estates boundary was acceptable. His updated statement to regarding the proposed section line easement vacation(s) was: “This proposal is acceptable, and SCRO would like to provide a comment of non-objection to EV 3-368 in light of this amendment.”

Discussion:

1. Determination of the existence of the public access and utility easements:
 - a. The U.S. Rectangular Survey Plat for Township 18 North, Range 1 East, Seward Meridian, Alaska was approved by the U.S. Surveyor General’s Office on April 2, 1915.
 - b. On September 4, 1962, Patent Number 1228390 was issued by the Bureau of Land Management conveying the following property to the State of Alaska:
Township 18 North, Range 1 East, Seward Meridian,
Section 21, Lot 4, SE¼ SW¼, W½ SW¼;
Section 28 NW¼ NW¼
 - c. **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. Pursuant to 11 AAC 51.065(f) the proposed alternate access is equal to or better and meets the requirements for vacation of a portion of the subject easement. The proposed alternate route is at least equally useable, considering length, type of terrain, and level of improvement.
3. Pursuant to 11 AAC 51.065(e)(1), the Department will give consideration to the recommendations of the MSB 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.
2. Dedication of the proposed alternate access route: Couloir Drive, Alpenglow Drive, N. Horizon View Drive and N. Experimental Drive as specified in the DNR petition and April 21, 2023 email from the Surveyor specifying the proposed road names.
3. Depict 15' utility easements running parallel with and outside the platted rights of way on the EV plat.
4. Comply with Matanuska-Susitna Borough's conditions of approval unless waived by the Director, DMLW.
5. A final plat (owner signed / surveyor sealed Mylar) must be submitted to DNR within two years from the date of approval of the Final Finding and Decision unless extended by DMLW, Survey Section.
6. 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 50 foot 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.

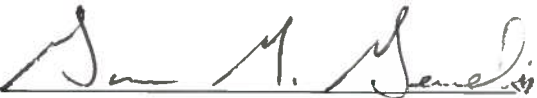
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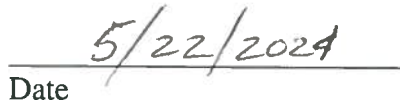
Victoria Braun, Adjudicator
Natural Resource Specialist 2


Date

Approved by:



Gwen M. Gervelis, PLS
Chief, Survey Section


Date

Enclosures: Attachment A

PUBLIC NOTICE:

**Notice of Preliminary Decision
Section Line Easement Vacation
EV 3-368**

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 to vacate the section line common to the SW¼ of Section 21, T18N, R1E, S.M., Alaska and the NW¼NW¼ of Section 28, T18N, R1E, S.M. The petitioner is requesting the vacation of segments of the 50-foot section line easements within Tract A, Plat 2006-33, Palmer Recording District excluding the portion of the 50-foot SLE within Section 21 east of N. Experimental Drive and extending to the eastern boundary of the project. The excluded area falls within proposed lot 37. This area is approximately 50 feet by 368 feet as depicted on Attachment A.

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/>. Persons wanting to provide comments to this proposed easement vacation can **submit their comments in writing or by e-mail. To be eligible to appeal under AS 38.05.035(i)(j), one must respond in writing during the comment period. All comments must be received in writing at DMLW on or before June 24, 2024.** Correspondence or questions should be addressed to DNR, DMLW, Survey Section, Attn: Victoria Braun, 550 W. 7th Ave., Suite 650, Anchorage, Alaska 99501. Comments may also be submitted via e-mail at victoria.braun@alaska.gov. Please reference EV 3-368 in your correspondence, include the date, your name, telephone number, mailing and e-mail address to ensure you receive copies of all subsequent decisions.

If public comment in response to this notice indicates the need for significant changes to the Preliminary Decision, additional public notice will be given. If no significant change is required, the PD, including any minor changes, will be issued as a Final Finding & Decision.

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.