

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

**Preliminary Decision  
Petitioners: Daniel G. McGrath  
Section Line Easement Vacation  
EV 3-378**

**Petitioned Action:**

This property site is located 1.3 miles west of the Richardson Highway at milepost 335. The physical address is 5790 Old Valdez Trail, Fairbanks Tax Lot 3411. The petitioner is requesting a keyhole vacation measuring 1,130 square feet within Parcel 3, Brunk Waiver, 78-242W, Fairbanks Recording District (Tax Lot 3411). The 1,130 square foot area encompasses a portion of the petitioner's house that encroaches into the 33-foot section line easement in Section 34. This action falls within the E½SE¼SE¼ of Section 34, T3S, R3E, F.M., Alaska, as depicted on Attachment A. This proposed action has been reviewed by the Fairbanks North Star Borough. The proposed keyhole vacation has been deemed acceptable by the Fairbanks North Star Borough under certain conditions of approval (see agency review section of this decision).

The reasons for the easement vacation cited by the applicant:

- “Free use and enjoyment of our property.”

**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 3-378 constitutes the administrative record used for the basis of this decision.

**Borough:**

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

**State Easement Interest:**

A 33-foot wide RS 2477 section-line easement exists within the subject property pursuant to Chapter 19, SLA 1923 (See Discussion).

**Underlying Interest:**

The petitioners own the estate underlying the 33-foot section line easements proposed for vacation.

**Alternate Route:**

The Old Valdez Trail, also known as the Old Richardson Highway, and Skila Street are the proposed alternate access. The proposed alternate route is adjacent to the west border of FNSB Tax Lot 3411. To the south of the subject property, the Old Valdez Trail is a 100-foot dedicated

right-of-way, according to Plat 82-122 and Plat 2009-24, both of which were recorded in the Fairbanks Recording District. To the north of the subject property, the Richardson Highway is a 60-foot dedicated right-of-way, according to Plat 96-92 and Plat 83-210, Fairbanks Recording District. A secondary alternate access Skila Street, a dedicated 60-foot right-of-way, as depicted on Plat 82-122, recorded in the Fairbanks Recording District. The DOT&PF is asserting a prescriptive easement adjacent to the Old Valdez Trail also known as Old Richardson Highway within Section 34 (See Attachment A Plat note #4). The easement width has been approximated to encompass the entire roadway and whatever extra is required to maintain the roadbed, and this area (16,820 sq ft) within Parcel 3, Brunk Waiver (Tax Lot 3411) will be dedicated to the public by the petitioner.

**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:**

The subject SLE is partially cleared and has trees as well as vegetation. The house encroaches the subject section line easement area proposed for vacation. A field inspection was not conducted. Based on aerial imagery there does not appear to be any pedestrian or recreational vehicular use of the section line easement. The property owner appears to be the only party utilizing the SLE. In addition to the house that encroaches the 33’ SLE, there is a 11.9-foot x 9.3-foot shed within the SLE, and a 24.1-foot x 12.4-foot building and a 10.8-foot x 20.0-foot tent that encroaches into adjacent Lot 1, Block 4, Plat 82-122, as well as the adjacent 50’ SLE.

**Practicality of Use:**

Both alternate routes, the Old Richardson Highway and Skila Street are constructed. Access in the vicinity is provided by the constructed roads. The proposed section line easement vacation will not adversely affect land in other ownership or access to it.

**Agency Review:**

Initial Agency review of the proposed action began on March 18, 2024 and concluded May 18, 2024. 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 – Northern Regional Land Office (NRO), Alaska Mental Health Trust Land Office (MHTLO), DNR Division of Parks and Outdoor Recreation (DPOR), the Fairbanks North Star Borough.

**Agency Comments:**

1. The following noticed agencies submitted comments of non-objection: DPOR, DOT&PF, ADFG and the NRO.
2. Prior to submitting the Section Line Easement Vacation Petition to DNR, an Application for Vacation and Replat for this proposed vacation was submitted to the Fairbanks North Star Borough (FNSB). The FNSB serialized this application as VA001-24: Brunk Waiver. The FNSB provided the Conditions of Approval and Findings of Fact for Application for Vacation Replat. This was presented during a public meeting to the FNSB Platting Board on December 20, 2023. A conditional approval was issued requiring “1) The new trail to be cleared, as shown on the preliminary plat, shall match the existing trail in width and degree of clearing. 2) Any improvement, including fence line as shown on the preliminary plat, shall be removed, if necessary, such that the new trail to be cleared is centered within a 10ft wide obstacle free corridor.” To review this in its entirety, please contact the Fairbanks North Star Borough for a copy of the meeting minutes.
3. No other comments or objections for the proposed easement vacation action were received.

**Discussion:**

1. Determination of the existence of the public access and utility easements:
  - a. The Rectangular Survey Plat for Township 3S, Range 3E, Fairbanks Meridian was approved by the U.S. Surveyor General’s Office on May 19, 1922 and accepted on August 31, 1922.
  - b. The lands underlying the SLE proposed to be vacated were conveyed into private ownership by Patent Number 1084687. Patent Number 1084687 was issued by the Bureau of Land Management conveying the east half of the southeast quarter of Section thirty-four in Township three south, of Range three east, Fairbanks Meridian, Alaska, to Harvey Carnet on June 30, 1936. The date of entry (application filed) according to the case file abstract for BLM case file AKF 002829 was June 4, 1934.
  - c. BLM Historical Index research verified that the subject property was unreserved & unappropriated on April 6, 1923.
  - d. Federal documents research confirmed there were no other reservations (Executive Orders, Public Land Orders, Acts of Congress) impacting the subject area prior to April 6, 1923 and the passage of Ch. 19 SLA 1923.
  - e. For surveyed federal land that was unappropriated and unreserved at any time on or after April 6, 1923 through January 17, 1949, 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. Pursuant to AS 19.30.410 and 11 AAC 51.065(g) 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 routes are at least equally useable, considering length, type of terrain, and level of improvement.
3. Pursuant to 11 AAC 51.065(e)(1), the Department has given consideration to the recommendations of the FNSB Platting Board regarding this action.

**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. Comply with Fairbanks North Star Borough'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 Finding and 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 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:

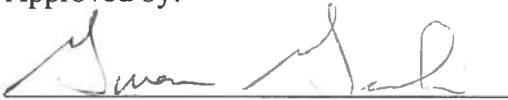


Victoria Braun, Adjudicator  
Natural Resource Specialist 2

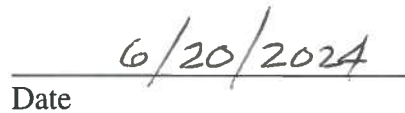


Date

Approved by:



Gwen M. Gervelis, PLS  
Chief, Survey Section



Date

Enclosures: Attachment A

**PUBLIC NOTICE:**

**Notice of Preliminary Decision  
Section Line Easement Vacation  
EV 3-378**

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 request for a keyhole vacation measuring 1,130 square feet within Lot 3, Brunk Waiver, 78-242W, Fairbanks Recording District (Tax Lot 3411). The 1,130 square foot area encompasses a portion of the petitioner's house that encroaches into the 33-foot section line easement of Section 34. This property site is located 1.3 miles west of the Richardson Highway at milepost 335. The physical address is 5790 Old Valdez Trail. This action falls within the E½SE¼SE¼ of Section 34, T3S, R3E, F.M., Alaska, as depicted on Attachment A.

The public is invited to comment on the PD. Copies are available from DMLW, 550 W. 7<sup>th</sup> Avenue, Suite 650, Anchorage, AK 99501-3576 or <https://aws.state.ak.us/OnlinePublicNotices/>. Persons wanting to provide comments on 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 July 22, 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](mailto:victoria.braun@alaska.gov). Please reference EV 3-378 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.