

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

**Preliminary Decision
Petitioners: Aleksandr Baletsky
Section Line Easement Vacation**

EV-3-375

Petitioned Action:

The proposed action consists of vacating within Lots 1-4 of Little Susitna Flats, Plat 2022-133, Palmer Recording District, the 33-foot section line easements either side of the section line common to Sections 14 & 23, T18N, R2W, S.M., Alaska. This action falls within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T18N, R2W, S.M., Alaska, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T18N, R2W, S.M., Alaska as depicted on Attachment A.

The reasons for the easement vacation cited by the applicant: “to create useable areas and remove setbacks incurred by the section line easement.” The setbacks referenced by the petitioner are Matanuska-Susitna Borough setbacks per MSB code 17.55.010 Setbacks.

Legal Authority

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

Administrative Record:

The DNR Survey Case File EV-3-375 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:

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

Underlying Interest:

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

Alternate Route:

The proposed alternate access is N. Pittman Road, a newly dedicated 50-foot right-of-way adjacent to the north side of N. Pittman Road, and remaining section line easements. N. Pittman Road is a dedicated 100-foot right-of-way located adjacent to the south border of Lots 1-4 of Little Susitna Flats, Plat 2022-133, Palmer Recording District.

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:

The two subject SLEs are both unconstructed. A field inspection was not conducted. Looking at Google Earth Imagery dated June 17, 2023, it appears the 20' MTA Utility Easement (Bk. 853, Pg. 776) has been cleared. It appears the public is using the cleared Utility Easement for ATV travel instead of utilizing the two 33' section lines that fall within Lots 1-4 of Little Susitna Flats, Plat 2022-23. According to this plat, the cleared utility easement is approximately 10' south of the southern border of the 33' SLE within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T18N, R2W, S.M., Alaska.

Practicality of Use:

The alternate route, N. Pittman Road shares the south boundary of Lots 1-4. N. Pittman Road is constructed. Access within the vicinity is improved with the constructed road. The section line easement immediately to the west of the subject area was previously vacated within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 14, and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 23 by EV 2-686, Plat 98-23, Palmer Recording District. The subject 66-foot-wide section-line easement has not been cleared. The proposed easement vacation will not adversely affect land in other ownership, nor will it negatively impact public access in this area.

Agency Review:

Initial Agency review of the proposed action began on August 17, 2023 and concluded December 5, 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), DNR Division of Parks and Outdoor Recreation (DPOR), Matanuska-Susitna Borough, Matanuska Electric Association, Enstar Natural Gas Company and Matanuska Telephone Agency (ROW).

Agency Comments:

1. The following Agencies submitted comments of non-objection: DPOR, ADFG, MHTLO, MTA, SCRO.
2. DOT&PF submitted an approval with conditions as follows: “The petitioner dedicates an additional fifty-foot (50’) wide right of way adjacent to the existing Pittman Road right of way for future realignment and/or straightening.”
3. An email was received from the petitioner’s surveyor, Craig Hanson with Hanson Land Solutions, LLC, stating:
“The Petitioner and I have considered the ramifications of the DOT request for a 50’ wide ROW dedication along the north side of Pittman Road to facilitate future realignment.

The Petitioner agrees to the request and will dedicate said 50' with the vacation of the Section Line Easement.”

This confirmation of compliance with DOT&PF’s conditional approval formally reconciled the agency comments related to this proposed section line easement vacation.

4. No other comments or objections for the proposed easement vacation action were received.

Discussion:

1. Determination of the existence of section-line easements:
 - a. The lands underlying the SLE proposed to be vacated were conveyed into private ownership by Patent Number 1223485. Patent Number 1223485 granted the E½SW¼ Section 14 and NW¼NE¼, NE¼NW¼ Section 23, Township 18 North, Range 2 West, Seward Meridian to Jimmie Clayton Randell on October 19, 1961. The date of entry (application filed) according to the BLM case file abstract for AKA 47557 was February 24, 1959 (for both sections).
 - b. The protraction diagram “S 2-17” of Townships 17 to 20 North, Ranges 1 to 4 West, Seward Meridian, Alaska was approved by the Bureau of Land Management on November 16, 1959. This protraction diagram was published in the Federal Register on December 24, 1959.
 - c. The Rectangular Survey Plat for Township 18N, Range 2W, Seward Meridian was accepted by the United States Department of the Interior, Bureau of Land Management on November 18, 1960.
 - d. Pittman Flats Subdivision was recorded in the Palmer Recording District on October 8, 2021, as Plat 2021-121. According to the Pittman Flats Subdivision, thirty-three foot section line easements are depicted either side of the section line common to Sections 14 and 23 of T18N, R2W, S.M.
 - e. Little Susitna Flats, a Subdivision of Lot 5 Pittman Flats (2021-121), was recorded in the Palmer Recording District on December 2, 2022, as Plat 2022-133. According to the Little Susitna Flats Plat, thirty-three foot section line easements are depicted either side of the section line common to Sections 14 and 23 of T18N, R2W, S.M.
2. 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. Comply with Matanuska-Susitna Borough’s conditions of approval unless waived by the Director, DMLW.
- 3. Per the conditional approval submitted from the Department of Transportation and Public Facilities, the petitioner will dedicate a fifty-foot (50’) wide right of way adjacent to the existing Pittman Road (North) right of way for future realignment and/or straightening.
- 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 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:

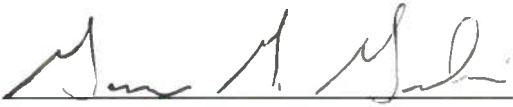
Based on our findings, the applicant meets DNR’s requirements to vacate the subject section line easements. The proposed vacation may be in the state’s best interest. Therefore, the Division of Mining, Land and Water, Survey Section recommends approval of this action and may proceed with adjudication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

Prepared by:


 Victoria Braun, Adjudicator
 Natural Resource Specialist 2

2/28/2024
 Date

Approved by:


 Gwen M. Gervelis, PLS
 Chief, Survey Section

2/28/2024
 Date

Enclosures: Attachment A

PUBLIC NOTICE:

**Notice of Preliminary Decision
Section Line Easement Vacation
EV-3-375**

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 two 33-foot section line easements within Lots 1-4 of Little Susitna Flats, Plat 2022-133, Palmer Recording District. This action falls within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T18N, R2W, S.M., Alaska, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T18N, R2W, S.M., Alaska as depicted on Attachment A. It should be noted that the petitioner will donate a 50-foot easement adjacent to the north side of Pittman Road per the Department of Transportation and Public Facilities conditional approval stipulation.

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 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 April 1, 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 3-360 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.