

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

**Preliminary Decision  
Petitioners: Prentice Neil Fox and Deborah H. Fox  
Section Line Easement Vacation  
EV 3-379**

**Petitioned Action:**

EV 3-379 is located in 0.85 miles west of N. Palmer-Fishhook Road in Hatcher Pass Village. The petitioner is requesting the vacation of the 50-foot north-south running section line easement within Tract B-1 of Hatcher Pass Village Phase I, Plat 2018-112, Palmer Recording District. This action falls within the NE¼ of Section 33, T19N, R1E, S.M., Alaska. It will measure 50-feet by 940.67-feet resulting in a 47,034 square foot SLE vacation, as depicted on Attachment A.

The reason for the easement vacation cited by the applicant is:

1. “The intersection of the easement with Edgerton Parks falls only 210’ from the constructed Mountain Trails Drive to the west. However, the MSB Subdivision Construction Manual calls for 300’ of space between intersections onto collector roads. This minimum spacing is to ensure safety. Use of the easement proposed for vacation would clearly present a safety hazard by placing intersections too close for a collector road.
2. The site distance along Edgerton Parks road from the intersection of the easement proposed for vacation does not meet sight distances established by the MSB Subdivision Construction Manual. The limited visibility presents yet another safety issue with use of the easement in question.”

**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 3-379 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:**

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

**Underlying Interest:**

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

**Alternate Route:**

The petitioners are offering to dedicate a 60-foot public use easement to be dedicated along the NW boundary of Tract B-1. This will measure approximately 802' x 60'. At the request of the SCRO and DOT&PF, the petitioners will dedicate a 15-foot public utility easement adjacent to the 60-foot public access easement being dedicated as the alternate route. Thus, these combined dedicated easements will total 75-feet along the NW boundary of Tract B-1. 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 July 19, 2024. A significant portion of the SLE has been cleared and falls within the 50-foot easement proposed for vacation. It is currently being utilized as a driveway by the residents (owners) of the neighboring property as outlined in the Mutual Access Agreement, recorded as document number 2018-007536-0, Palmer Recording District. The driveway measures approximately 519-feet according to the Mutual Access Agreement. A 464.26-foot SLE remains attached to the SLE adjoining Tract B-1 that run N-S. Other than the aforementioned portion of the driveway within the SLE and the 464.26-foot SLE, the remaining SLE within the NE¼ of Section 33 is uncleared, unconstructed and portions of the SLE in the NE ¼ have been previously vacated through DNR by EV 3-296 (see Practicality of Use). The SLE within the NE¼ of Section 33 south of Tract B-1 down to the quarter section line measuring 50-feet by 208.74-feet was also previously vacated by EV 3-296.

**Practicality of Use:**

The 50-foot section line easement within Tract B-1 is proposed to be vacated by this action. The petitioners are offering to dedicate a 60-foot Public Use Easement and an adjacent 15-foot utility easement along the northwest boundary of Tract B-1. The alternate route will provide access from N. Mountain Trails Drive to the remaining 1404-foot section line easement within Section 33 and allow continuity to E. Forgiven Drive in the nearby Hatcher Pass Estates Subdivision. The public use dedication will measure approximately 801-feet by 60-feet, and the utility easement dedication will measure approximately 747-feet by 15-feet. As disclosed in the Public Use Patterns portion of this decision, the portion of the SLE in the NE¼ of Section 33 within T19N, R1E, S.M., Alaska, measuring 1025.30-feet, north of E. Forgiven Drive was previously vacated by EV 3-296, Plat 2020-4, Palmer Recording District. The research conducted by DNR confirmed there is no SLE on the west boundary of Section 34, T19N, R1E, S.M., Alaska. Given EV 3-296 combined with the non-existence of an SLE in Section 34, the more practical route to the remaining SLEs in the overall vicinity, specifically in within the SE¼ of Section 28, T19N, R1E, S.M., Alaska, is via N. Mountain Trails Drive. The proposed easement vacation will not adversely affect land in other ownership, nor will it negatively impact public access in this area given that the roads in the vicinity: N. Mountain Trails Drive, N. Solic Rick Circle, N. Resilience Circle and E. Forgiven Drive and have been dedicated and constructed.

**Agency Review:**

Initial Agency review of the proposed action began on December 22, 2023, and concluded February 16, 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 – Southcentral Regional Land Office (SCRO), Alaska Mental Health Trust Land Office (MHTLO), DNR Division of Parks and Outdoor Recreation (DPOR) and the Matanuska-Susitna Borough.

**Agency Comments:**

1. The following Agencies submitted comments of non-objection: DPOR and ADFG.
2. DOT&PF submitted a conditional approval as follows: “The Alaska Department of Transportation & Public Facilities (DOT&PF) doesn’t object to the vacation, but would suggest/request that they provide for 15’ utility easements adjacent to the 60’ dedication proposed, in order to mirror the ROW of E. Forgiven Drive, which an eventual road would connect into.”
3. SCRO submitted a conditional approval as follows: “DMLW Southcentral Regional Land Office has no objection to the easement vacation as proposed, provided that a 15’ utility easement adjacent to the 60’ dedication proposed is additionally dedicated to facilitate utility installation that would have been previously facilitated by the Section Line Easement proposed to be vacated.”
4. On March 13, 2024, an email was received from the petitioner’s surveyor, Craig Hanson with Hanson Land Solutions, LLC, stating:  
“As per the request, the Petitioner agrees to provide a utility easement to Mountain Trails Road. Attached is a detail depicting this on our plat.” The attachment depicted a “15-foot utility easement to be granted this [EV] plat”. The 15-foot utility easement is adjacent to the 60-foot Public Use Easement to be dedicated on the EV Plat as alternate access.

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

5. 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 state ownership by Patent Number 50-68-0211. Patent Number 50-68-0211 granted the NE¼ of Section 33, Township 19 North, Range 1 East, Seward Meridian, Alaska to the State of Alaska on April 5, 1968. The date of entry (application filed) according to the BLM case file abstract for AKA 058952 was April 8, 1963.
- b. The Rectangular Survey Plat for Township 19N, Range 1E, Seward Meridian was approved by the United States Department of the Interior, Bureau of Land Management on June 10, 1963. This township plat first surveyed the subject section line.
- 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(e)(1), the Department has given consideration to the recommendations of the August 1, 2024 MSB 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 Matanuska-Susitna Borough's conditions of approval, as specified at their September 1, 2024 Platting Board meeting.
3. Per the conditional approval submitted from the Department of Transportation and Public Facilities and the SCRO, the petitioner will provide a 60-foot public use dedication and adjacent 15-foot utility easement, in order to mirror the ROW of E. Forgiven Drive.
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  
Victoria Braun, Adjudicator  
Natural Resource Specialist 2

10/7/2024  
Date

Approved by:

Gwen M. Gervelis  
Gwen M. Gervelis, PLS  
Chief, Survey Section

10/07/2024  
Date

Enclosures: Attachment A

**PUBLIC NOTICE:**

**Notice of Preliminary Decision  
Section Line Easement Vacation  
EV 3-379**

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 50-foot section line easement within Tract B-1 of Hatcher Pass Village Phase I, Plat 2018-112, Palmer Recording District. This action falls within Section 33, T19N, R1E, S.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 November 7, 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 3-379 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.