

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

**Preliminary Finding & Decision  
Petitioner: Three Bears Alaska, Inc.  
Section Line Easement Vacation  
EV 3-338**

**Petitioned Action:**

EV 3-338 falls within the Kenai Peninsula Borough, in Cooper Landing between mileposts 44 and 45 on the south side of the Sterling Highway. The proposed action consists of vacating portions of the two 50-foot wide section line easements (SLEs) along the section line common to sections 25 and 36 and lying within Tract B1 of Quartz Creek Subdivision Outfitters Way Replat, recorded as Plat 2024-14, Seward Recording District. This action lies in the SE¼ of Section 25 and the NE¼ of Section 36, within T. 5 N., R. 3 W., S.M., Alaska as depicted on Attachment A.

The reasons cited by the applicant:

- “In 1991, the Kenai Peninsula Borough imposed restrictions on the property that require the property to be used for commercial or light industrial purposes. Three Bears Alaska, Inc.’s proposed development of the property complies with those restrictions. Further, Three Bears’ proposed development also fits with the KPB’s current expressed plans for developing its own property in the area (see attached Quartz Creek Commercial Package). However, the location of the section line easement and the rights that go with the section line easement conflict with the Three Bears’ proposed commercial development of the property (see attached drawing)”.

**Legal Authority:**

AS 19.10.010, AS 19.30.410, 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 3-338 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:**

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

**Underlying Interest:**

The petitioner owns the estate underlying the SLE’s proposed for vacation.

**Alternate Route:**

The proposed alternate access is via the dedicated and constructed Sterling Highway, a 300-foot ROW; Persistent Way, a 60-foot dedicated ROW; and Outfitters Way, a 60-foot dedicated ROW. The Sterling Highway was dedicated by the Omnibus Act Public Law 86-70. Persistent Way was originally dedicated by Plat 1994-11. It is partially constructed. The most recent plat of the site, Plat 2024-14, dedicated Outfitter’s Way (a requirement of approval from DOT&PF). According to Plat 2024-14, the portion of Persistent Way which connects to the Sterling Highway is approximately 603.29 feet long. Using measure feature of Google Earth Pro, approximately 315-feet of the 603.29 feet of Persistent Way has been constructed approximately to the section line. This portion provides public access from the section line easement proposed for vacation directly to the Sterling Highway.

**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 SLE proposed for vacation is unconstructed. The public does not appear to be using the section line easement. Using aerial imagery one can see the petitioner/landowner has cleared a portion of Tract B1. The aerial imagery shows no evidence of any type of public use of the section line common to Sections 25 and 36 within Tract B1. Nor does the available aerial imagery show any use of the aforementioned section line extending to the east or west of Tract B1. A field inspection was not conducted.

**Practicality of Use:**

The current state of the SLE proposed to be vacated is cleared and unconstructed. The current state of the proposed alternate route, Persistent Way is mostly unconstructed as well; however, the portion of Persistent Way providing access between the SLE and the Sterling Highway has been constructed. The said portion offers access to Outfitters Way and the Sterling Highway which is

the alternate route. With that said, since the grades of both ROWs are for the most part equal, and since access to adjacent parcels is not diminished by this action, it will be more practical for the general public to use the Sterling Highway to Outfitters Way. Additionally, Outfitters Way serves as a frontage road to access Tract C1 and Tract B1. The constructed highway has a greater width than the SLE proposed to be vacated. It gets regular use year-round as well as routine maintenance.

**Agency Review:**

Initial Agency review of the proposed action began on November 3, 2021 and concluded November 23, 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 – 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 except DOT&PF.
2. On October 25, 2021 the DOT&PF submitted an objection to the SLE vacation stating the following:
  - “It is not in the best interest of the State to vacate the SLE for future public access. The SLE is of value to the public.
  - Inconsistently treating land use and access between MP 44 and 45 would void over 40 years of expensive highway and land use planning conducted for the highway immediately south of this area.
  - DOT&PF would consider support of the SLE vacation if it was replaced with a more feasible East-West easement of equal value and utility. This support would require: Dedicated access from Quartz Creek Road to the subject parcel and beyond to the adjoining parcel”

On November 22, 2021, an Agency Response Letter was sent to the petitioner and their surveyor communicating DOT&PF’s objection and proposed stipulation for conditional approval. Comment reconciliation discussions between DOT&PF staff, the petitioner and the surveyor continued through January 14, 2022. The petitioning party agreed to a 60-foot ROW dedication to be in compliance with DOT&PF’s condition for approval. This agreement was termed the “Outfitter’s Way proposal”. Outfitter’s Way is a dedicated 60-foot ROW that is adjacent to the Sterling Highway within Tract B1 (the proposed site), Tract C1 and Tract A1 of Plat 2024-14. On August 31, 2023, DOT&PF staff informed the DNR, Survey Section they were formally withdrawing their department’s objection based on the Outfitter’s Way proposal which was in process. The Quartz Creek Subdivision Outfitters Way Replat was recorded on August 9, 2024, as Plat 2024-14 satisfying DOT&PF’s conditional approval requirement.

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

**Discussion:**

1. Determination of the existence of the Section-Line Easements:
  - a. The Rectangular Survey Plat for Township 5 North, Range 3 West, Seward Meridian, Alaska was accepted on September 28, 1992, by the Bureau of Land Management.

- b. The lands underlying the SLE portions proposed to be vacated were conveyed by BLM to the State of Alaska by Patent No. 50-96-0735 issued on September 27, 1996. The date of entry (application filed) according to the case file abstract for BLM case file AKAA 017584 was July 3, 1978.
  - c. Pursuant to **AS 19.10.010 “Dedication of land for public highways”** *A tract 100 feet wide between each section of land owned by the state, 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... ”.* **For surveyed or unsurveyed land owned by the State of Alaska at any time on or after July 1, 1960 the width identified in AS 19.10.010 is 50 feet** (11 AAC 51.025, editor’s note #7).
    - i. To assert a State SLE, BLM Historical Index research is not necessary for determining if the lands were unreserved during any of the periods of legislative acceptance. The subject lands were owned by the State of Alaska and are subject to the SLE dedication in AS 19.10.010. However, if RS 2477 SLEs (33-foot wide) also exist underlying the State SLEs, the State’s interest in said RS 2477 SLEs will also be vacated by this action.
2. The proposed alternate access is reasonably comparable and meets the requirements for vacation of the subject section-line easements pursuant to AS 19.30.410 and 11 AAC 51.065. The proposed alternate route is adequately wide to satisfy all present and reasonable foreseeable uses.
  3. Pursuant to 11 AAC 51.065(e)(1), the Department will give consideration to the recommendations of the Kenai Peninsula Borough’s Platting Board regarding this action when a copy of the Approved Minutes have been 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 KPBP’s conditions of approval unless waived by the Director, DMLW.
3. The petitioner has complied with DOT&PF’s Outfitters Way Plat requirement. The recording of Plat 2024-11 satisfied DOT&PF’s condition of approval.
4. Submittal of a Certificate to Plat, current within 90-days, with the final plat.
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.

**Recommendation:**

Based on our findings, the applicant meets DNR’s requirements to vacate the subject section-line easement. 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  
Natural Resource Specialist 2

January 16, 2025

Date

Approved by:

Gwen M. Gervelis

Gwen M. Gervelis, PLS  
Chief, Survey Section

1/16/2025

Date

**PUBLIC NOTICE:**

**Notice of Preliminary Decision  
Section Line Easement Vacation  
EV-3-338**

Per AS 19.30.410 & 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 vacate portions of the two 50-foot wide section line easements (SLEs) lying within Tract B1 of Quartz Creek Subdivision Outfitters Way Replat, recorded as Plat 2024-14, Seward Recording District. This action lies in the SE $\frac{1}{4}$  of Section 25 and the NE $\frac{1}{4}$  of Section 36, within T. 5 N., R. 3 W., S.M., Alaska as depicted in 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 email. 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 by DMLW on or before February 18, 2025.** Correspondence or questions should be addressed to DNR, DMLW, Survey Section, Attn: Victoria Braun, 550 W. 7<sup>th</sup> Avenue, Suite 650, Anchorage, AK 99501. Comments may also be submitted via e-mail at [victoria.braun@alaska.gov](mailto:victoria.braun@alaska.gov). Please reference EV 3-338 in your correspondence, include the date, your name, telephone number, mailing address and e-mail address to ensure you receive copies of all subsequent decisions.

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).

DMLW reserves the right to waive technical defects in this publication.

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