

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

Preliminary Decision

**Petitioners: Linda Commerci, Douglas Johnson, Emily Pippin and Carl Johnston
Section Line Easement Vacation
EV 3-369**

Petitioned Action:

This property is located in Anchorage, Alaska. The petitioned action consists of vacating segments of the two 33-foot section line easements (SLEs) within Lot 21, Block 3, Sunset Hills West Subdivision, filed as Plat No. P-600 on July 17, 1961 and Lot 15, Block 6, Sunset Manor Subdivision Unit No. 2, filed as Plat No. 74-115 on June 13, 1974, Anchorage Recording District (ARD), along the East-West running section line common to Sections 29 & 32, T12N, R3W, Seward Meridian (S.M.). This action falls within the SW¼ of Section 29, and the NW¼ of Section 32, T12N, R3W, S.M., Alaska, as depicted on Attachment A.

The reasons for the section-line easement vacation as cited by the applicants:

- “To eliminate the encroachment of the 2 houses, and their associated improvements, from the SLE. The Alaska [Railroad] RR, or any other individuals, do not utilize the area of the SLE over the 2 lots; nor have they historically.”

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.

The Alaska Department of Transportation and Public Facilities (DOTPF) and the Department of Natural Resources (DNR) have concurrent authority for approving the vacation of section-line easements.

Administrative Record:

The DNR Survey Case File EV-3-369 constitutes the administrative record used for the basis of this decision.

Borough:

The proposed action is located within the Municipality of Anchorage.

State Easement Interest:

Two 33-foot wide RS 2477 section-line easements exist within the subject properties pursuant to Chapter 19, SLA 1923. (See Discussion 1).

Underlying Interest:

The property underlying one of the 33-foot section line easements proposed for vacation is Lot 21, Block 3, Sunset Hills West Subdivision, Plat No. P-600, filed in the Anchorage Recording District on July 17, 1961. This property is owned by Emily Pippin and Carl Johnston. The property

underlying the other 33-foot section line easement proposed for vacation is Lot 15, Block 6, Sunset Manor Subdivision Unit No. 2, Plat No. 74-115, filed in the Anchorage Recording District on June 13, 1974. This property is owned by Linda Comerci and Douglas Johnson.

Alternate Route:

The proposed alternate access is via Jarvi Dr, Oceanview Dr, and Reef Place right-of-way (ROW) to the entry point of Oceanview Bluff Park. The alternate route is within one mile of the SLE area proposed for vacation. Oceanview Bluff Park is accessed by heading south on Reef Place ROW which terminates at the entry point of the park. Reef Place is a 50-foot wide ROW, dedicated by the plat of Oceanview Subdivision Addition No. 6, filed in the Anchorage Recording District as Plat No. 71-223. Reef Place and Oceanview Bluff Park are designated as a public access points to the Anchorage Coastal Wildlife Refuge in the 1991 Anchorage Coastal Wildlife Refuge Management Plan¹. The 1991 Anchorage Coastal Wildlife Refuge Management Plan lists nine designated public access points, specifying they are designated as “Public Access - to encourage public use of the refuge, as appropriate...”. The signage and trail maintenance in the refuge is well maintained by the State of Alaska Department of Fish and Game (ADF&G). The ADF&G supports this EV action (see Agency Comment section item #4). There is signage and an easily identifiable pedestrian path which intersects with the remaining 33-foot SLEs along the North-South running section line common to Sections 29 and 30, T12N, R3W, S.M. One would be able to travel south on remaining SLEs to the intersecting SLEs along the East-West running section line common to Sections 29 and 32 of T12N, R3W, S.M., which is directly west of the Alaska Railroad tracks and the area proposed for vacation. Public access to adjoining and adjacent parcels is not negatively affected by this action. The proposed easement vacation will not adversely affect land in other ownership nor should it negatively impact public access in this area.

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:

Department of Natural Resources staff members conducted a field inspection on October 4, 2023. The field inspection confirmed the subject areas proposed for vacation have both been cleared. Each of the homes on both lots encroach the respective section line easements proposed for vacation. Based on the site visit, there is no pedestrian, ATV or vehicular use of the SLE by the public. Access to both lots is directly off of Jarvi Drive, a 60-foot ROW. It should be noted

¹ 1991 Anchorage Coastal Wildlife Refuge Management Plan, Page 14

that access on each lot does not fall within the section line easements proposed for vacation. The area westerly of the subject lots contain a very steep embankment. According to the National Map Imagery Topo, the elevation at the western edge of the subject lots drop approximately 30 feet, descending from an elevation of approximately 120 feet to 90 feet above sea level where it abuts the easterly boundary of the Alaska Railroad tracks/ROW. The railroad track is active, therefore, poses a significant safety concern with regard to the public utilizing the existing SLEs and traversing the railroad tracks. The lands westerly of the Alaska Railroad ROW descend from 90 feet to 10 feet above sea level where the lands level out towards the Turnagain Arm. The distance from this point west to Turnagain Arm is approximately 0.66 miles. During the site inspection the DNR team did not identify any pedestrian, ATV, or motorized vehicular use of the area by the public within the area extending to Turnagain Arm along the section line easement. One of the 33-foot section line easements easterly of the subject property across Jarvi Drive was previously vacated by EV-2-629, the Plat of Lot 1A, Block 5, Sunset Manor Subdivision Unit No. 2 and Lot 23A, Block 1, Sunset Hills West Subdivision, recorded as Plat No. 96-10, ARD. This vacated portion of the 33-foot section line easement is south of the section line common to Sections 29 & 32. The 33-foot section line easement north of the section line has not been vacated.

Practicality of Use:

The section line easements proposed for vacation are cleared with two homes encroaching on the SLEs. The alternate access, Reef Place, is a dedicated and constructed 50-foot ROW that was dedicated for public use by the Plat of Oceanview Subdivision Addition No. 6, filed as Plat No. 71-223, ARD, and this road is used by neighborhood residents and the public. Reef Place ROW terminates at the entry point of Oceanview Bluff Park. There is signage and an easily identifiable pedestrian path at Ocean Bluff Park which intersects with the remaining SLEs between Sections 29 & 30 of T12N, R3W, S.M. The grade of the alternate access is insignificant compared to the steep grade of the SLEs that exist westerly of the subject property. This grade combined with the active use of Alaska Railroad ROW westerly of the subject property renders the area proposed for vacation impractical for public use. There are no practical reasons to retain the SLEs proposed to be vacated.

Agency Review:

Initial Agency review of the proposed action began on September 14, 2023 and concluded December 20, 2024. Agencies notified included Department of Transportation & Public Facilities (DOT&PF) Central Region, Alaska Department of Fish and Game (ADF&G), DNR Division of Mining, Land and Water – Southcentral Regional Land Office (SCRO), Alaska Railroad Corporation (ARC), Alaska Mental Health Trust Land Office (MHTLO), DNR Division of Parks and Outdoor Recreation (DPOR) and the Municipality of Anchorage. Agency Review response reminders were sent out on October 3, 2023, October 20, 2023, December 6, 2023 and September 13, 2024 to solicit agencies for an agency comment regarding this petition to vacate the section line easements. An agency response letter was sent to the petitioners and their surveyor on November 13, 2024. ADF&G proceeded to do an independent site inspection on December 9, 2024 (see more details below).

Agency Comments:

Agency Review comments were received as follows:

1. On October 3, 2023, the Alaska Railroad Corporation submitted a comment stating: “no objection to the vacation of the section line easements as indicated in EV 3-369.”
2. On October 17, 2023, the Alaska Department of Fish and Game (ADF&G) responded with the following comment: “ADF&G objects to the vacation of these section line easements. These [section line] easements may eventually provide public access to the Anchorage Coastal Wildlife Refuge and there are not adequate alternatives. ADF&G does not support removing public access to public lands and waters.”
3. October 17, 2023, DOT&PF commented as follows: “DOT&PF holds title to lands within the Anchorage Coastal Wildlife Refuge on behalf of ADF&G. In this capacity, Central Region DOT supports ADF&G’s objection for their stated reasons, and also supports any revised proposal that ADF&G may approve.”
4. After the ADF&G site visit on December 9, 2024, the following revised comment was submitted by ADF&G:

“In reviewing the context of this easement and the conditions of traversing through private property, down the steep embankment to the Alaska Railroad, and then crossing the tracks to access the Refuge, ADF&G supports vacating this easement to accommodate the private land interests and those of the Anchorage Coastal Wildlife Refuge. There are two user-friendly access points to the northwest of this site located at Oceanview Bluff Park and Oceanview Park; both are within one mile of 14000 Jarvi Drive. At Oceanview Bluff Park, the access is established, ADF&G maintains signage for refuge users, and access to the refuge does not involve crossing the railroad tracks.

Cooperation with the Municipality of Anchorage Parks and Recreation Department is well established for the ADF&G Lands & Refuges Program. We support signage and trail maintenance to access points into the Anchorage Coastal Wildlife Refuge that accommodate safe pedestrian travel and acknowledgement for refuge regulations and wildlife habitat conservation. It is in the best interest of refuge management for natural resources to ensure that visitors abide with state regulations to reduce impacts on waterfowl and other birds during nesting season and migrations.

I request that DOT concur with our vacation of this easement.”

5. DOT&PF sent in the following comment on December 11, 2024: “DOT&PF non-objects if ADF&G also does so. Please reference our agencies’ prior comments: ‘DOT&PF holds title to lands within the Anchorage Coastal Wildlife Refuge on behalf of ADF&G. In this capacity, Central Region DOT supports ADF&G’s objection for their stated reasons, and also supports any revised proposal that ADF&G may approve’.”
6. December 20, 2024, DNR Southcentral Regional Lands Office (SCRO) indicated their office had no objections stating:
“After discussing with PAAD, whose input is that a full vacation from the 33’ SLE in both lots 15 and 21 is being requested; the access to the northwest at Oceanview

Park and Oceanview Bluff Park is approximately 2,500 feet away; and to the southeast at Rabbit Creek Rifle Range is approximately one mile away. PAAD does not have any objections to the vacation.

SCRO also has no objections and notes the SLE within lots 21 & 15 crosses the railroad tracks, and so any access it provided has safety implications. The alternate access to the NW alleviates this safety concern, and for that reason SCRO agrees it is equal or better.”

7. No other comments or objections were received regarding this proposed EV action.

Discussion:

1. Determination of the existence of the Section Line easements:

- a. The U.S. Rectangular Survey Plat for Township 12 North, Range 3 West, Seward Meridian, Alaska was approved by the U.S. Surveyor General’s Office on August 7, 1917 and accepted on February 26, 1918.
- b. On September 6, 1950, Serial Patent No. 1129889 granted the SE¼SW¼ of Section 29, T12N, R3W, S.M., Alaska (subject property is in this area) to Edwin A. Jarvi. The date of entry for Edwin A. Jarvi, according to the Bureau of Land Management (BLM) Case Abstract for Case Serial No. AKA 011415, was May 20, 1947.
- c. On July 19, 1951, Serial Patent No. 1132569 granted the NE¼NW¼ of Section 32, T12N, R3W, S.M., Alaska (subject property is in this area) to William H. Hancock. The date of entry for William H. Hancock, according to the BLM Case Abstract for Case Serial No. AKA 011585, was August 6, 1947.
- d. According to the BLM Historical Index, research verified that the subject lands were unreserved and unappropriated on April 6, 1923:
 - i. Federal Documents Researched:
 - (a) Proclamation No. 852, signed on February 23, 1909, consolidated the Chugach National Forest and the Afognak Forest and Fish Culture Reserve under the name Chugach National Forest. This included an exhaustive legal description including the lands described as “...thence in a general southerly, westerly and northerly direction along the shores of said bay [Kachemak Bay], Cook Inlet and Knik Arm, at the mean low tide line, to the right bank of the main divide of the Chugach Mountains...”. This encompassed what would eventually become the city of Anchorage, and reserved the subject lands for the Chugach National Forest.
 - (b) Executive Order (EO) No. 2589, signed on April 11, 1917, “creating and amending Alaskan Timber Reserve No.1,...to include the timber upon the following described areas: A tract of land five miles wide on each side of the right of way of the Governmental railroad, commencing at Seward, on Resurrection Bay, and extending along the right of way of said railroad to the left limit of Knik River...” This timber reservation reserved the timber on the subject lands, but did not prevent location, settlement, or entry under the public land laws.
 - (c) Proclamation 1519, signed April 16, 1919, excluded certain lands, including the subject lands, from the Chugach National Forest. It directed that the excluded lands “shall be opened to entry only under the provisions of the homestead laws requiring residence, at and after, but not before, nine o’clock a.m., standard time, on the eight-fourth day after

the date of this proclamation, and to settlement and other disposition, under any public land law applicable thereto, at and after, but not before, nine o'clock a.m., standard time, on the ninety-first day after said date." The subject lands became open to settlement and unreserved on the ninety-first day after this proclamation.

(d) There are no other reservations impacting the subject area prior to April 6, 1923.

e. For surveyed federal land that was unappropriated and unreserved at anytime 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 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.
3. Pursuant to 11 AAC 51.065(e)(1), the department will give consideration to the recommendations of the Municipality of Anchorage 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 Municipality of Anchorage's conditions of approval for the section line easement vacation. The petitioner must complete a formal platting action to obtain approval by the Municipality of Anchorage Platting Board.
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 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.

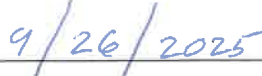
Prepared by:


Victoria Braun
Natural Resource Specialist 2


Date

Approved by:


for Gwen M. Gervelis, PLS
Chief, Survey Section


Date

Enclosures: Attachment A

PUBLIC NOTICE:

**Notice of Preliminary Decision
Section Line Easement Vacation
EV-3-369**

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 segments of the two 33-foot section line easements within Lot 21, Block 3, Sunset Hills West Subdivision, filed as Plat No. P-600, and Lot 15, Block 6, Sunset Manor Subdivision Unit No. 2, recorded as Plat No. 74-115, Anchorage Recording District. This action falls within the SW $\frac{1}{4}$ of Section 29, and the NW $\frac{1}{4}$ of Section 32, T12N, R3W, S.M., Alaska, 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 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 October 27, 2025.** 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 3-369 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.