

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

**Preliminary Finding & Decision
Petitioner: James and LuAnne Nelson
RS 2477 Section Line & Utility Easement Vacation
EV 3-396**

Petitioned Action:

The subject property is located approximately 7.5 miles east of Anchor Point, Alaska, at the intersection of North Fork Road and Knob Hill Road. The petitioners are requesting the vacation of a portion of the 33-foot wide section line easement (SLE) and the abutting 10-foot wide utility easement (UE) along the north boundary of Lot 1, Block 4, Hill Park Estates Unit 1, Plat No. 76-50, Homer Recording District (HRD). The petitioned action falls within Section 2, T5S, R14W, S.M., Alaska. They are proposing to dedicate a 33-foot wide public access and utility easement along the east boundary of said lot to serve as alternate access to the existing easements to be vacated by the petitioned action. During Agency Review, the Alaska Department of Transportation & Public Facilities (DOT&PF) required the adjustment of this action (see the Agency Review portion of this decision). Thus, the amended petition reduced the full SLE vacation area down to a ‘keyhole’ vacation to meet DOT&PF’s requirement for approval. Essentially the request reduced the SLE area to only include the portion of the existing house that encroaches the SLE as depicted on Attachment A.

The reasons cited by the applicant:

- “Existing house built into the 33 foot SLE”.

Legal Authority:

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

The Alaska 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 3-396 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:

A 33-foot wide RS 2477 section line easement exists within the subject property pursuant to Chapter 19, SLA 1923 (See Discussion 1).

Underlying Interest:

The petitioner owns the estate underlying the SLE and UE proposed for vacation.

Alternate Route:

The proposed alternate access is to be dedicated as a required part of this easement vacation action. They are proposing to dedicate the easterly 33-feet of Lot 1, Block 4, Hill Park Estates Unit 1, Plat No. 76-50, HRD, as a public access and utility easement that will serve as an alternate to the vacated easements, as depicted on Attachment A.

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 portion of the 33-foot wide SLE and adjacent 10-foot wide UE proposed for vacation within Lot 1 Block 4, Hill Park Estates Unit 1, Plat No. 76-50, HRD, is partially cleared and constructed. Upon viewing the aerial imagery, it is evident that the petitioner/landowner has partially cleared a portion of their lot. The public does not appear to be utilizing the uncleared SLE portions within this lot for any pedestrian, ATV or vehicular use according to recent aerial imagery. The property owners are currently utilizing a portion of the SLE; a large portion of the existing house that was constructed encroaches the 33-foot wide SLE almost entirely along it's width.

A field inspection of this lot was conducted by DNR Survey Staff on September 17, 2020, prior to the submittal of an easement vacation petition. The purpose of the field inspection was to verify if the existing structure on the subject lot was in trespass; needing to confirm whether the structure went beyond the boundaries of the subject lot into the adjacent Lot 7, Block 4, as shown on the plat of Alaska State Land Survey No. 2021-37, North Fork Micro Ag Subdivision, recorded as Plat No. 2024-17, HRD, which is currently owned by the State of Alaska. The field inspection determination confirmed the structure was within the 33-foot wide SLE of Lot 1, Block 4, Hill Park Estates Unit 1, Plat No. 76-50, HRD, and was not in trespass on the abutting State-owned lot to the north.

According to Homer Electric Association (HEA), the 10-foot wide PUE shows “a pad mount transformer, being fed by an underground electric line from the east, is located within the platted utility easement”. HEA has provided a written non-objection to this action as the newly dedicated public access and utility easement will allow for HEA’s mount transformer to remain within the newly oriented dedicated easement. The public does not appear to be using the 10-foot wide PUE and recent aerial imagery shows no evidence of any type of public use of the 33-foot wide SLEs along the East-West running section line common to Section 2, T5S, R14W, S.M. and Section 36, T4S, R14W, S.M., except for the encroachment of the property owner’s existing structure.

Practicality of Use:

The current state of the existing SLE and UE that are proposed to be vacated are partially cleared and constructed along a portion of the subject lot’s north boundary and can be accessed from the lot’s northwest corner via North Fork Road, a 100-foot wide right-of-way (ROW), along the westerly boundary of the subject lot. There does not appear to be any evidence of pedestrian, ATV, or vehicular use within the uncleared and fully vegetated portions of the existing SLE and UE. The current state of the proposed alternate route is unconstructed and can be accessed from the lot’s southeast corner via Knob Hill Road, a 60-foot wide ROW, which abuts the southerly boundary of the subject lot and intersects the aforementioned North Fork Road ROW to the west. The southerly and westerly 20-feet of the subject lot is a dedicated public utility easement (PUE) and building setback. Recent aerial imagery shows that 20-foot wide PUE and building setback portions are cleared and nothing has been constructed, deeming it to be a viable alternative to the 10-foot UE proposed for vacation. With current existing access and future access to be dedicated, there are no practical reasons to retain the keyhole portion of the SLE proposed for vacation.

Agency Review:

Initial Agency review of the proposed action began on November 12, 2024 and concluded March 13, 2025. Agencies notified included Department of Transportation & Public Facilities (DOT&PF) Central Region, Alaska Department of Fish & Game (ADF&G), DNR Division of Mining, Land and Water (DMLW) – Southcentral Regional Land Office (SCRO), Alaska Mental Health Trust Land Office (MHTLO) and DNR Division of Parks and Outdoor Recreation (DPOR), Homer Electric Association (HEA) and the Kenai Peninsula Borough (KPB).

Agency Comments:

1. The following agencies submitted comments of non-objection DPOR, HEA, ADF&G and SCRO.
2. KPB indicated they would fully review this action when the surveyor formally presents the easement vacation plat to KPB’s Planning Commission. The Borough’s review is incorporated into DNR, DMLW’S conditions for approval (see that portion of this decision).
3. On December 5, 2024 the DOT&PF submitted an objection particularly to the SLE vacation stating the following:
 - “The State of Alaska, Department of Transportation & Public Facilities (DOT&PF) Right of Way Section has reviewed the section line easement vacation request serialized by DNR as EV 3-396. DOT

&PF is concerned that the current proposal will negatively impact the functional integrity of the national Highway System by reducing the potential for East-West connections in the area. However, DOT &PF does not object to a keyhole vacation around the existing house.”

On March 19, 2025, an Agency Response Letter was sent to the petitioner and their surveyor communicating DOT&PF’s objection and proposed stipulation for conditional approval provided the action is limited to a keyhole vacation within the SLE. Comment reconciliation discussions between DOT&PF staff, the petitioner and the surveyor commenced.

The petitioning party agreed to DOT&PF’s keyhole SLE vacation to be in compliance with DOT&PF’s condition for approval.

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 U.S. Rectangular Survey Plat for Township 5 South, Range 14 West, Seward Meridian, Alaska, was approved by the U.S. Surveyor General’s office on May 29, 1919, and accepted on June 21, 1919, by the General Land Office (GLO).
 - b. On June 1, 1965, Patent No. 50-65-0647 granted Lots 3 & 4 of Section 2, T5S, R14W, S.M., Alaska (subject property in this area), to Keith A. Epperson. The date of entry (application received) for Keith A. Epperson, according to BLM Case Abstract for Case Serial No. AKA 047236, was January 26, 1959.
 - c. According to the BLM Historical Index, research verified that the subject lands were affected by the following Proclamations:
 - i. On February 23, 1909, Proclamation 852 enlarged the boundary of Chugach National Forest to include most of the Kenai peninsula. This proclamation reserved the subject lands for the Chugach National Forest.
 - ii. On August 2, 1915, Proclamation 1307 changed the boundary of Chugach National Forest and restored the subject lands to settlement and entry. The subject lands became unreserved again thirty-five days after this proclamation.
 - iii. Historical Index research indicated that there were no other federal reservations of the subject lands prior to April 6, 1923.
 - d. 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. 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 KPB's conditions of approval unless waived by the Director, DMLW.
3. The petitioner has complied with DOT&PF's conditional approval requirement. The petitioners have agreed to reduce the action from a full vacation of the SLE in Lot 1 Block 4, Hill Park Estates Unit 1, Plat 76-50, HRD down to a 'keyhole' SLE vacation in this lot around the footprint of the encroaching structure.
4. Dedication of a 33-foot public access and utility easement along the east boundary of Lot 1, Block 4.
5. Submittal of a Certificate to Plat, current within 90-days, with the final plat.
6. 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

10/16/2025
Date

Approved by:

Ryan Quigley
Ryan Quigley, PLS, CFES
for Gwen M. Gervelis, PLS
Chief, Survey Section

10/10/25
Date

PUBLIC NOTICE:

**Notice of Preliminary Decision
RS 2477 Section Line & Utility Easement Vacation
EV-3-396**

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 a keyhole portion of the 33-foot wide section line easement and the 10-foot wide utility easement within Lot 1, Block 4, Hill Park Estates Unit 1, recorded as Plat No. 76-50 in the Homer Recording District (HRD). This action falls within Lot 3 of Section 2, T5S, R14W, 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 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 November 10, 2025.** Correspondence or questions should be addressed to DNR, DMLW, Survey Section, Attn: Victoria Braun, 550 W. 7th Avenue, Suite 650, Anchorage, AK 99501. Comments may also be submitted via e-mail at victoria.braun@alaska.gov. Please reference EV 3-396 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).

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