

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

**Preliminary Finding & Decision
Petitioner: Emmitt & Mary Trimble.
R.S. 2477 Section-Line Easement Vacation
EV 3-387**

Petitioned Action:

EV 3-387 falls within the Kenai Peninsula Borough, in Anchor Point, Alaska. The proposed action consists of vacating segments of the two 33' wide R.S. 2477 section line easements (SLEs) within Lot 1 of Hollywood Kennedy Gibbons 2006 Addition, Plat 2007-108, Homer Recording District (HRD). This action falls within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23 of T4S, R15W, S.M., Alaska. Note: During agency review the area of the R.S. 2477 SLEs proposed to be vacated was reduced down to approximately 7,675.5 square feet, essentially creating a keyhole vacation area that measures approximately 178.5'x 43.0', as depicted on Attachment A. See the agency review portion of this preliminary decision for more details.

The reasons cited by the applicant:

- "...A house was constructed within the easement on the west side of the section line..."

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 (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 3-387 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 33-foot wide R.S. 2477 section line easements exist within the subject properties pursuant to Chapter 19, SLA 1923 (see Discussion #1).

Underlying Interest:

The petitioners own the estate underlying the SLE's proposed for vacation.

Alternate Route:

The proposed alternate access is via the dedicated and constructed Sterling Highway, a 232-foot right-of-way (ROW), abutting the westerly boundary of Lot 1, Hollywood Kennedy Gibbons 2006 Addition (Plat 2007-108, HRD). The Sterling Highway ROW was dedicated to the state by the

Omnibus Act Public Law 86-70. Portions of Long Gone Avenue, a 60-foot ROW, were dedicated by the plat of Hollywood Kennedy Gibbons 2006 Addition (Plat 2007-108, HRD), the plat of Short Subdivision (Plat 84-83 HRD), and the plat of Gibbons Tracts (Plat 80-90 HRD). Long Gone Avenue abuts the southerly boundary of the subject lot and 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:

A field inspection was conducted by DNR staff on July 30, 2024. The SLE proposed for vacation is cleared and unconstructed. Electric utilities do run the course of the easement. The public does not appear to be using the section line easement. Using aerial imagery one can see the petitioner/landowner has cleared areas surrounding an existing home that is encroaching the section line easements in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22 and NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T4S, R15W, S.M., Alaska. The field inspection verified there is no evidence of any type of public use of the section line common to Sections 22 and 23 within Lot 1, Hollywood Kennedy Gibbons 2006 Addition.

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, the Sterling Highway is constructed and well maintained. Since the grades of the alternate ROWs and the segment of the SLE proposed for vacation 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. The constructed highway has a greater width than the SLE proposed to be vacated and gets regular use year-round as well as routine maintenance.

Agency Review:

Initial Agency review of the proposed action began on May 16, 2024 and concluded August 5, 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 (DMLW) South Central Regional Office (SCRO), Alaska Mental Health Trust Land Office (MHTLO) and DNR Division of Parks and Outdoor Recreation (DPOR)

Agency Comments:

Non-objection comments were submitted by the DNR DPOR, ADF&G and DNR DMLW SCRO.

1. On April 17, 2025 the DOT&PF submitted an objection 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 additional information submitted for section line easement vacation request serialized by DNR as EV 3-387.

Thank you for the additional information showing the location of the building and existing easements of record. DOT&PF is concerned that the current proposal will negatively impact any potential future expansion of the Sterling Highway transportation corridor in this area, and objects to the vacation as requested. However, DOT&PF does not object to a keyhole vacation around the existing building.”

On April 30, 2025, 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 July 2025. The petitioning party agreed to the keyhole SLE vacation to be in compliance with DOT&PF’s condition for approval. This required an updated keyhole SLE vacation exhibit from their surveyor. The updated keyhole SLE exhibit was received in September. The updated exhibit satisfied DOT&PF’s conditional approval keyhole requirement.

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 4 South, Range 15 West, Seward Meridian, Alaska was approved by the U.S. Surveyor General’s Office on December 19, 1919 and accepted on December 16, 1920 by the of Bureau of Land Management.
- b. The lands underlying the SLE portions proposed to be vacated were conveyed by BLM to private ownership by BLM Serial Patent No. 1129660, issued on August 10, 1950. The date of entry (application filed) according to the case abstract for BLM Case Serial No. AKA 012653 was October 20, 1948.

c. BLM Historical Index Research:

- i. A review of the BLM Historical index indicates that lands within the entire township were withdrawn by Proclamation No. 852, dated February 23, 1909 and reserved as part of Chugach National Forest. Said lands were later eliminated from the National Forest reservation by Proclamation No. 1519, dated April 16, 1919 and restored to Homestead entry on July 9, 1919 and to settlement on July 16, 1919.
 - ii. 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 11 AAC 51.065(f). The proposed alternate route is adequately wide and at last equally usable to satisfy all present and reasonably 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. A 'Notice of Decision' from the Kenai Peninsula Borough Assembly's June 20, 2023 meeting was submitted with the EV petition stating KPB approves of this action.

Approval of the proposed action is contingent upon the following conditions:

1. Pursuant to AS 38.05.945, 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 must comply with DOT&PF's keyhole SLE vacation requirement as depicted on Attachment A.
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 portions of 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
Natural Resource Specialist 2

10/10/2025
Date

Approved by:

Ryan Quigley

Ryan Quigley, PLS, CFEDS
Gwen M. Gervelis, PLS
Chief, Survey Section

10/10/25
Date

PUBLIC NOTICE:

**Notice of Preliminary Decision
Section Line Easement Vacation
EV-3-387**

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 vacate segments of the two 33' wide R.S. 2477 section line easements (SLEs) within Lot 1 of Hollywood Kennedy Gibbons 2006 Addition, Plat 2007-108, Homer Recording District. This action falls within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23 of T4S, R15W, 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 3-387 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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