



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

**Department of Natural Resources**

DIVISION OF MINING, LAND & WATER  
Survey Section

550 West 7th Avenue, Suite 650  
Anchorage, Alaska 99501-3576  
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December 16, 2016

KPB  
Paul Voeller  
144 N. Binkley  
Soldotna, AK 99669

Dear Mr. Voeller:

Subject: EV-3-254 Preliminary Decision and Public Notice

The proposed actions consist of vacating the 33-foot wide section-line easement (SLE) lying within that portion of the NE1/4NE1/4 of Section 23, T5N, R9W, SM, lying north of Scout Lake Loop Road.

Also enclosed is a copy of the Public Notice of Preliminary Decision which will be published in the legal section of the Alaska Dispatch News December 13, 2016 and again the following week.

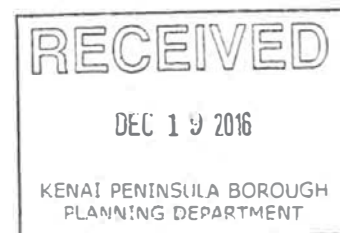
Any comments concerning the proposed action must be submitted in writing to DNR -- DMLW by **5 PM on January 13, 2016**. Contact DNR with questions at 907-375-7733 or [joseph.poydack@alaska.gov](mailto:joseph.poydack@alaska.gov) or Stan Brown 269-8521 or [stanley.brown@alaska.gov](mailto:stanley.brown@alaska.gov) by January 13<sup>th</sup>.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Poydack".

Joe Poydack  
DNR Adjudicator

Enc: Copy PD & Public Notice



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

Preliminary Decision

Petitioner: Samuel M. Christner

Section Line Easement Vacation

EV-3-254

**Petitioned Action:**

The proposed actions consist of vacating the 33-foot wide section-line easement (SLE) lying within that portion of the NE1/4NE1/4 of Section 23, T5N, R9W, SM, lying north of Scout Lake Loop Road as depicted in Attachment A.

The reason cited by the applicant: "I didn't know about the easement and built my house and garage within the easement. Cannot finance the home until encroachment is resolved."

**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-3-254 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:**

33-foot wide 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 SLEs proposed for vacation.

**Alternate Route:**

The proposed alternate access is the constructed 100' Scout Lake Loop Road right-of-way (ROW). Public access to adjoining & adjacent parcels is not 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 by Survey Section staff on January 21, 2016. The subject SLE is unconstructed. There is no evidence that vehicles, pedestrians or other public interests have been or are using those portions of the SLE proposed to be vacated.

**Practicality of Use:**

The SLE proposed to be vacated is bound on the east by the Scout Lake Loop Road ROW. The SLEs on both sides of the section line in the adjoining subdivision to the west, Mountain Ridge Heights Subdivision Part 1, were vacated in 1977 by EV 2-34 (Plat 77-158); therefore, the SLE proposed to be vacated dead ends at the west boundary of the subject property. Sufficient dedicated public access exists that provides access to the adjoining lands.

**Agency Review:**

Initial Agency review of the proposed action began on July 19, 2016 and concluded October 6, 2016. 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.
2. 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 9 West, Seward Meridian, Alaska was approved by the General Land Office was accepted on May 6, 1941.

b. The lands underlying the SLE proposed to be vacated, were conveyed into private ownership by Patent No. 1214039. The date of entry (application filed) according to the case file abstract for BLM case file AKA 037986 was September 10, 1957. A review of the BLM Historical Index verified that the lands described above were unappropriated and unreserved on May 6, 1941. **For surveyed land owned by the Territory of Alaska at any time on or after April 6, 1923 through January 17, 1949, or for surveyed federal land that was unappropriated and unreserved at any time during that period, the width identified in Ch. 19, SLA 1923 for any section-line easement is 33 feet** (11 AAC 51.025, editor's note #2).

c. The lands underlying the SLE to the north, in Section 14, were conveyed to the State of Alaska by US Patent 50-85-0308, issued April 13, 1985. **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 51.065, editor's note #7).

2. The proposed alternate access is reasonably comparable and meets the requirements for vacation of a portion of the subject section-line easement pursuant to AS 19.30.410 and 11 AAC 51.065., the proposed alternate route is protected by easements of record and adequately wide to satisfy all present and reasonable foreseeable uses. Continued access to adjacent lands is ensured by the remaining unconstructed SLEs and dedicated ROWs.

3. Pursuant to 11 AAC 51.065(e)(1), the department will give consideration to the recommendations of the KPB 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. The advertising cost for Public Notice is at the expense of the applicant.

2. Comply with KPB's conditions of approval unless waived by the Director, DMLW.

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 Decision unless extended by DMLW, Survey Section.

4. Submittal of a Certificate to Plat, current within 90-days, with the final plat.

**Recommendation:**

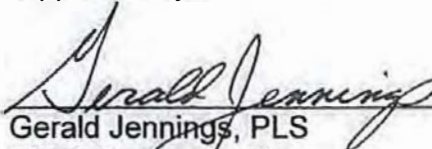
Based on our findings, the applicant meets DNR's requirements to vacate the subject section-line easement. The proposed vacation may be in the state's best interest. Therefore, the Division of Mining, Land and Water, Survey Section recommends approval of this action and may proceed with adjudication and public notice in accordance with AS 38.05.945.

Prepared by:

  
\_\_\_\_\_  
Joseph L. Poydack, Adjudicator

29 November 2016  
Date

Approved by:

  
\_\_\_\_\_  
Gerald Jennings, PLS  
Chief, Survey Section

Nov 29, 2016  
Date



**PUBLIC NOTICE:**

**Notice of Preliminary Decision  
Section Line Easement Vacation  
EV-3-254**

Per AS 19.30.410, the Department of Natural Resources, Division of Mining, Land and Water has made a Preliminary Decision giving contingent approval to a petition vacating a portion of the section-line easement lying within NE1/4NE1/4 of Section 23, T5N, R9W, SM.

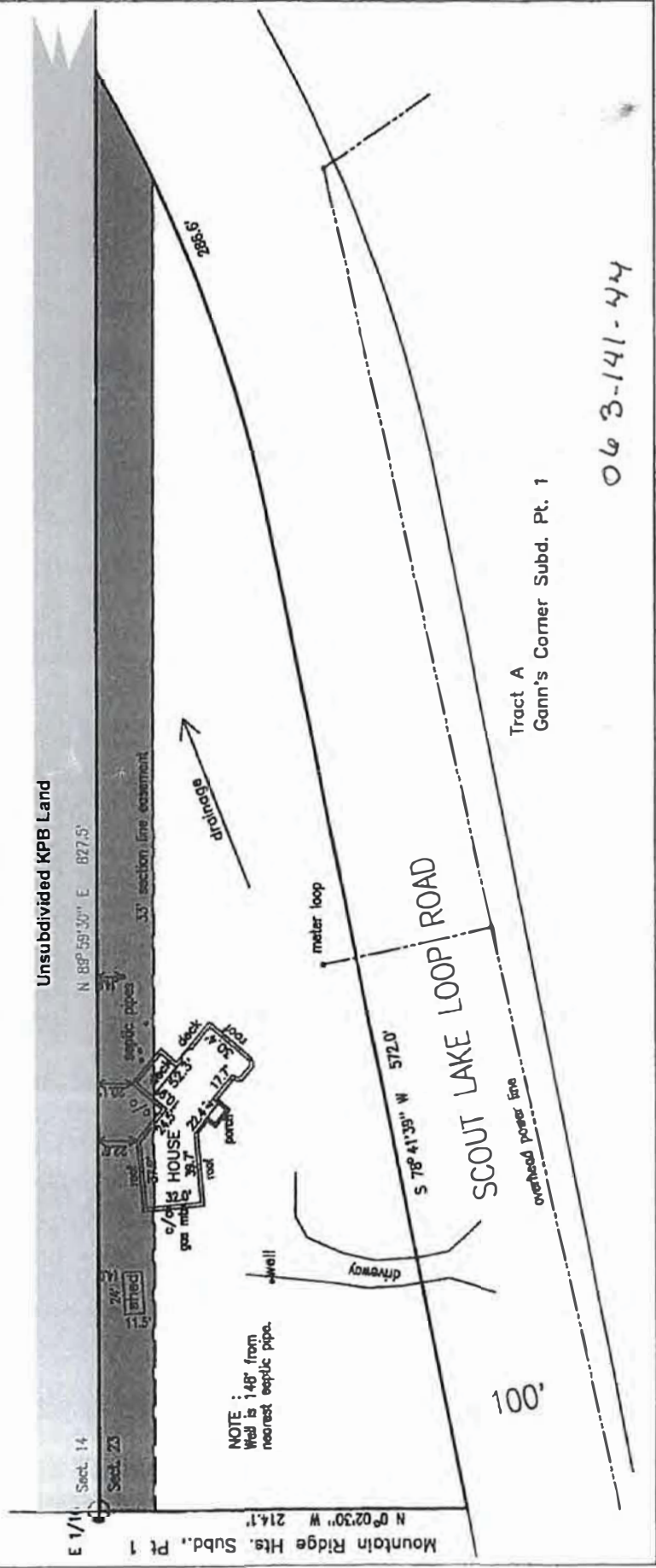
The public is invited to comment on the PD. Copies are available from DMLW, 550 W. 7<sup>th</sup> Avenue, Suite 650, Anchorage, AK 99501-3576 or <http://notes3.state.ak.us/pn/>. All comments must be received in writing at DMLW by 5:00 p.m. on January 13, 2017. **To be eligible to appeal, one must respond in writing during the comment period.** 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). To obtain PD/FD copy, reference case number EV-3-254; include date, your email and mailing address and telephone number. If you have any questions, contact DNR, Joseph L. Poydack, 375-7733 or [joseph.poydack@alaska.gov](mailto:joseph.poydack@alaska.gov).

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.

# EV 3-254 Attachment A Section 23, T5N, R9W, SM Page 1 of 2

- SLE Proposed to be Vacated
- 50' SLE Remaining

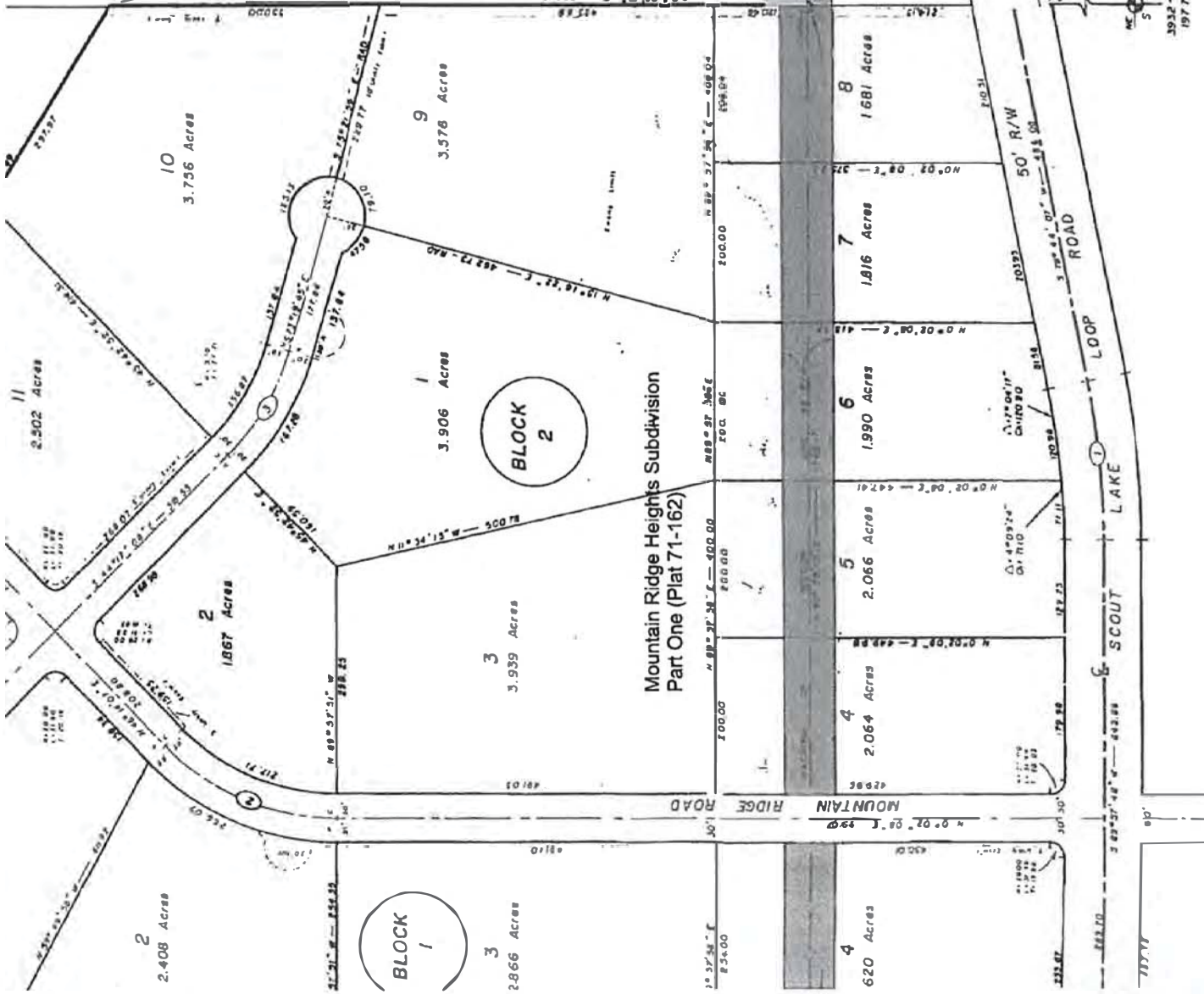


Tract A  
Gann's Corner Subd. Pt. 1

06 3-141-44

NOTE :  
Well is 148' from  
nearest septic pipe.

**EV 3-254 Attachment A**  
**Section 23, T5N, R9W, SM**  
**Page 2 of 2**



- 50' SLE Remaining
- SLEs Vacated EV 2-034
- SLE Proposed to be Vacated