

Kenai Peninsula Borough

Planning Department

MEMORANDUM

TO: Wayne Ogle, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Max Best, Planning Director *MB*

DATE: February 28, 2018

RE: Vacate those portions of the 33 foot and 50-foot Section Line Easements lying within Tracts I-1 and I-2 Davis-Mills Subdivision No. 2, Plat KN 2015-95. A formal right-of-way dedication is being proposed along the eastern boundary of Tract I-2 to provide connectivity with the remaining Section Line Easements. Petitioners: John B. & Pauline Mills of Kasilof, AK.

In accordance with AS 29.40.140, no vacation of a Borough right-of-way and/or easement may be made without the consent of the Borough Assembly.

During their regularly scheduled meeting of February 26, 2018, the Kenai Peninsula Borough Planning Commission granted approval of the proposed vacation by unanimous consent based on the following findings of fact and conditions. This petition is being sent to you for your consideration and action.

Findings

1. The proposed plat will provide a connecting fee right-of-way between Toombs Avenue and the remaining section line easements.
2. Connectivity between the section line easements and existing Toombs Avenue is required because the section line easements are the only public access available to the 160-acre parcel to the east.
3. Per KPB GIS 4-foot contours, terrain within the right-of-way proposed to be dedicated by the plat is not subject to steep slopes.
4. Per the submittal, the section line easements proposed to be vacated are not constructed.
5. Toombs Avenue, a 60-foot right-of-way, is constructed and in use for access.
6. The 76-acre parcel to the south and southeast fronts constructed Mills Pond Avenue and KPB maintained Carol Road.
7. The 76-acre parcel to the south and southeast has been issued a Mills Pond Avenue address.
8. The 40-acre parcel to the northeast fronts Toombs Avenue and has been assigned a Toombs Avenue address.
9. Toombs Avenue is a KPB right-of-way.
10. Carol Road connects Toombs Avenue with Cohoe Loop Road, a paved State maintained highway.
11. Carol Road, which connects Toombs Avenue and Cohoe Loop Road, is maintained by the KPB Roads Department.
12. Cohoe Loop Road is approximately 2,600 feet from the proposed Section Line Easement Vacation.
13. The State Department of Natural Resources issued a preliminary, conditional approval of the Section Line Easement Vacation on December 28, 2017.

Conditions

1. Consent of the KPB Assembly.
2. Dedicate a 60-foot wide right-of-way with extra right-of-way or slope easements dedicated/granted at the intersection between Toombs Avenue and the remaining section line easements per KPB 20.30.150.
3. Submittal of the final State Easement Vacation Plat to the Planning Department within four years of vacation approval.
4. Compliance with any State requirements for the section line easement vacation (KPB 20.70.220).

Draft, unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

cc: petitioners' w/minutes only

AGENDA ITEM F. PUBLIC HEARINGS

1. Vacate those portions of the 33 foot and 50-foot Section Line Easements lying within Tracts I-1 and I-2 Davis-Mills Subdivision No. 2, Plat KN 2015-95. A formal right-of-way dedication is being proposed along the eastern boundary of Tract I-2 to provide connectivity with the remaining Section Line Easements. The Section Line Easements being vacated are unconstructed and located within the SE1/4 of Section 3 and the NE/14 of Section 10, Township 2 North, Range 12 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough; KPB File 2018-008V.

Staff Report given by Max Best

PC Meeting: 2/26/18

Purpose as stated in petition: The owners are petitioning to vacate the section line easement to resolve an encroachment after a survey showed that the owners' house is partially in the section line easement. Petitioner

Petitioners: John B Mills and Pauline Mills of Kasilof, AK.

Notification: Public notice was published in the February 15 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the Peninsula Clarion, Homer News, and Seward Journal the week of February 19 as part of the Commission's tentative agenda.

Nine public hearing notices were mailed to owners within 600 feet of the proposed vacation. None of the receipts had been returned when the staff report was prepared.

The public hearing notice was emailed to 15 agencies and interested parties.

The public hearing notice was made available to 10 KPB Departments and 1 agency via a shared database.

The notice and maps were posted on the Borough web site and bulletin board.

Comments Received:

KPB Addressing Officer: 54310 MILLS POND AVE - will be retained on Tract I-1. New 60' ROW dedication needs a name approved by the addressing officer by final plat submittal. No objection to the vacation.

KPB Code Compliance: No comments.

KPB Planner: There are not any Local Option Zoning District issues with this proposed plat. Material Site Comments: There are not any material site issues with this proposed plat.

KPB Roads Department: No comments.

River Center: The proposed vacation is not within the Habitat Protection District; not within a flood hazard area.

State Department of Natural Resources: The DNR, DML&W Preliminary Decision giving contingent approval to the petition submitted by John & Pauline Mills to vacate portions of the 33 and 50-foot wide section-line easements (SLEs) lying within Tract I-1& I-2, Davis-Mills Subdivision requires a 100-foot wide ROW dedication. The preliminary plat included with KPB 2018-008V notice depicts a 60-foot wide ROW dedication. Unless State agencies agree to a lesser width prior to approving a Final Decision, this 100' requirement will be carried over to DNR's Final Decision.

Please be aware that this section-line easement vacation will not receive final approval from DNR or DOT&PF unless it complies with DNR's Final Decision.

State Parks: No comments.

Homer Electric Association: No comments.

Alaska Communications Systems: No objections.

ENSTAR: No comments, recommendations or objections.

Staff Discussion:

Per KPB GIS mapping, the proposed vacation is not within a mapped flood hazard zone.

The preliminary plat submittal is incomplete as of this date. Once the submittal requirements have been met, the preliminary plat will be scheduled for Plat Committee review.

The State Department of Natural Resources issued a preliminary decision approving the proposed Section Line Easement Vacation Plat (EV-3-258) on December 28, 2017, subject to:

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. Dedication of the 100' ROW as depicted on Attachment A.
3. Comply with KPB's conditions of approval unless waived by the Director, DMLW.

Staff concurs with preserving connectivity between the constructed fee right-of-way (Toombs Avenue) and the section line easements. The section line easements are the only public access to the 160-acre parcel to the east. However, staff respectfully disagrees with requiring a 100-foot width for the right-of-way connecting Toombs Avenue and the section line easements. The intersection of the unnamed right-of-way being dedicated by the Section Line Easement Vacation Plat may not comply with KPB 20.30.150 so extra right-of-way or side slope easements per KPB 20.30.120 may be required in order to assure a smooth, safe transition between rights-of-way.

Based on the following, staff recommends the connecting right-of-way being dedicated by the subject plat be 60 feet wide with extra right-of-way or side slope easements being dedicated/granted as needed for the intersection based on:

1. Toombs Avenue is a KPB right-of-way, not a State right-of-way.
2. The KPB Roads Department issues permits to construct section line easements within KPB.
3. KPB maintained Carol Road connects Toombs Avenue to State maintained Cohoe Loop Road.
4. Cohoe Loop Road is approximately 2,600 feet away (approximately one-half mile) from the proposed section line easement vacation.
5. Although the adjoining and adjacent parcels are large, the area has several lakes, ponds, kettle, and drainage ways.
6. KPB GIS 4-foot contours shows several areas within the adjoining and adjacent large acreage parcels are subject to slopes greater than 20 percent.
7. Based on terrain constraints, it appears unlikely the large acreage parcels can be subdivided into small lots.
8. The minimum width for a standard KPB right-of-way is 60 feet per KPB 20.30.120.
9. The remaining section line easements are 33 feet and 50 feet wide, for a total width of 83 feet, not 100 feet.

Per KPB 20.70.220, the petitioner is responsible for all submittals required by the State of Alaska Department of Natural Resources (DNR) in compliance with their procedures. The petition must be reviewed and approved by the planning commission, but final authority for approval and platting of the vacation rests with DNR. The petitioner is responsible for coordination with DNR and submittals to DNR.

Findings

1. The proposed plat will provide a connecting fee right-of-way between Toombs Avenue and the remaining section line easements.
2. Connectivity between the section line easements and existing Toombs Avenue is required because the section line easements are the only public access available to the 160-acre parcel to the east.
3. Per KPB GIS 4-foot contours, terrain within the right-of-way proposed to be dedicated by the plat is not subject to steep slopes.
4. Per the submittal, the section line easements proposed to be vacated are not constructed.
5. Toombs Avenue, a 60-foot right-of-way, is constructed and in use for access.
6. The 76-acre parcel to the south and southeast fronts constructed Mills Pond Avenue and KPB maintained Carol Road.
7. The 76-acre parcel to the south and southeast has been issued a Mills Pond Avenue address.
8. The 40-acre parcel to the northeast fronts Toombs Avenue and has been assigned a Toombs Avenue address.
9. Toombs Avenue is a KPB right-of-way.
10. Carol Road connects Toombs Avenue with Cohoe Loop Road, a paved State maintained highway.
11. Carol Road, which connects Toombs Avenue and Cohoe Loop Road, is maintained by the KPB Roads Department.
12. Cohoe Loop Road is approximately 2,600 feet from the proposed Section Line Easement Vacation.
13. The State Department of Natural Resources issued a preliminary, conditional approval of the Section Line Easement Vacation on December 28, 2017.

STAFF RECOMMENDATION: Based on Findings 1-13, staff recommends granting a four-year approval of the Section Line Easement Vacation, subject to:

1. Consent of the KPB Assembly.
2. Dedicate a 60-foot wide right-of-way with extra right-of-way or slope easements dedicated/granted at the intersection between Toombs Avenue and the remaining section line easements per KPB 20.30.150.
3. Submittal of the final State Easement Vacation Plat to the Planning Department within four years of vacation approval.
4. Compliance with any State requirements for the section line easement vacation (KPB 20.70.220).

NOTE: KPB 20.70.110. - Vacation consent—City council or assembly.

A vacation of a street right-of-way, public area, or public easement within the borough outside of the limits of cities may not be made without the consent of the borough assembly. The assembly shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the borough shall be considered to have given consent to the vacation.

KPB 20.70.120. - Action after denial of vacation petition.

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.**
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**

END OF STAFF REPORT

Vice Chairman Ruffner read the rules by which public hearings are heard.

Vice Chairman Ruffner opened the meeting for public comment.

1. Jerry Johnson, Johnson Surveying, PO Box 27, Clam Gulch

Mr. Johnson and the owners are in attendance to show support of the requested section line easement vacation and were available to answer questions.

Vice Chairman Ruffner asked if there were questions for Mr. Johnson. Hearing none, the public hearing continued.

Seeing and hearing no one else wishing to speak Vice Chairman Ruffner closed the public comment period and opened discussion among the Commission.

MOTION: Commissioner Ecklund moved, seconded by Commissioner Morgan to approve the vacation of those portions of the 33 foot and 50 foot Section Line Easements lying within Tracts I-1 and I-2 Davis-Mills Subdivision No. 2, Plat KN 2015-95 based on the following findings of fact and per staff recommendations.

Findings:

1. The proposed plat will provide a connecting fee right-of-way between Toombs Avenue and the remaining section line easements.
2. Connectivity between the section line easements and existing Toombs Avenue is required because the section line easements are the only public access available to the 160-acre parcel to the east.
3. Per KPB GIS 4-foot contours, terrain within the right-of-way proposed to be dedicated by the plat is not subject to steep slopes.
4. Per the submittal, the section line easements proposed to be vacated are not constructed.
5. Toombs Avenue, a 60-foot right-of-way, is constructed and in use for access.
6. The 76-acre parcel to the south and southeast fronts constructed Mills Pond Avenue and KPB maintained Carol Road.
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9. Toombs Avenue is a KPB right-of-way.
10. Carol Road connects Toombs Avenue with Cohoe Loop Road, a paved State maintained highway.
11. Carol Road, which connects Toombs Avenue and Cohoe Loop Road, is maintained by the KPB Roads Department.
12. Cohoe Loop Road is approximately 2,600 feet from the proposed Section Line Easement Vacation.
13. The State Department of Natural Resources issued a preliminary, conditional approval of the Section Line Easement Vacation on December 28, 2017.

VOTE: The motion passed by unanimous consent.

BENTZ YES	CARLUCCIO YES	ECKLUND YES	ERNST YES	FIKES YES	FOSTER YES	ISHAM YES
LOCKWOOD ABSENT	MARTIN ABSENT	MORGAN YES	RUFFNER YES	VENUTI YES	WHITNEY YES	11 YES 2 ABSENT

~~AGENDA ITEM F. PUBLIC HEARINGS~~

- ~~2. Vacate that portion of the Starboard Way right-of-way adjacent to Lots 4-8 Block 1 and Lots 4 and 5 Block 2 Mariner Village Subdivision as dedicated on Mariner Village Subdivision, Plat HM 68-657. That portion of the right-of-way being vacated is unconstructed and located within the NW 1/4 SE 1/4 of Section 16, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough; KPB File 2018-010V~~

Staff Report given by Max Best

PC Meeting: 2/26/18

~~Purpose as stated in petition: A portion of Starboard Way was constructed along with city water and sewer mains. The construction was stopped at the point where a wetland crosses the right-of-way (USACOE POA 2008-78, Beluga Lake). The City of Homer planning department agreed to allow the owners to dedicate a cul-de-sac, vacate the remaining right-of-way to the south boundary, vacate the existing lot lines, and create two lots from the existing seven that will access city utilities. Property to the south has access from a developed~~



Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

Charlie Pierce
Borough Mayor

February 28, 2018

KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF DECISION

MEETING OF FEBRUARY 26, 2018

RE: Vacate those portions of the 33 foot and 50-foot Section Line Easements lying within Tracts I-1 and I-2 Davis-Mills Subdivision No. 2, Plat KN 2015-95. A formal right-of-way dedication is being proposed along the eastern boundary of Tract I-2 to provide connectivity with the remaining Section Line Easements. The Section Line Easements being vacated are unconstructed and located within the SE1/4 of Section 3 and the NE/14 of Section 10, Township 2 North, Range 12 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough; KPB File 2018-008V.

By unanimous consent, the Kenai Peninsula Borough Planning Commission granted approval of the proposed vacation during their regularly scheduled meeting of February 26, 2018 based on the following findings of fact and conditions.

Findings

1. The proposed plat will provide a connecting fee right-of-way between Toombs Avenue and the remaining section line easements.
2. Connectivity between the section line easements and existing Toombs Avenue is required because the section line easements are the only public access available to the 160-acre parcel to the east.
3. Per KPB GIS 4-foot contours, terrain within the right-of-way proposed to be dedicated by the plat is not subject to steep slopes.
4. Per the submittal, the section line easements proposed to be vacated are not constructed.
5. Toombs Avenue, a 60-foot right-of-way, is constructed and in use for access.
6. The 76-acre parcel to the south and southeast fronts constructed Mills Pond Avenue and KPB maintained Carol Road.
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13. The State Department of Natural Resources issued a preliminary, conditional approval of the Section Line Easement Vacation on December 28, 2017.

Conditions

1. Consent of the KPB Assembly.
2. Dedicate a 60-foot wide right-of-way with extra right-of-way or slope easements dedicated/granted at the intersection between Toombs Avenue and the remaining section line easements per KPB 20.30.150.
3. Submittal of the final State Easement Vacation Plat to the Planning Department within four years of vacation approval.
4. Compliance with any State requirements for the section line easement vacation (KPB 20.70.220).

In accordance with AS 29.40.140, no vacation of a Borough right-of-way and/or easement may be made without the consent of the Borough Assembly. The proposed vacation will be forwarded to the Borough Assembly. The Assembly shall have 30 calendar days from the date of approval (February 26, 2018) in which to veto the Planning Commission decision. If the Planning Director receives no veto within the specified period, the Assembly shall be considered to have given consent to the vacation.

Please contact the Borough Clerk's office (907-714-2160 or 1-800-478-4441 toll-free within the borough) for additional information.

This notice and unapproved minutes of the subject portion of the meeting were sent February 28, 2018 to:

Johnson Surveying
PO Box 27
Clam Gulch, AK 99568

John & Pauline Mills
PO Box 260
Kasilof, AK 99610-0260

Louise Hooyer
Alaska State DOT&PF
PO Box 196900
Anchorage, AK 99519-6900

George Horton
Alaska State Division of Mining, Land & Water
550 W. 7th Ave #650
Anchorage, AK 99501-3576

Joseph Poydack
Alaska DNR
550 W. 7th #1050A
Anchorage, AK 99501-3579

AGENDA ITEM F. PUBLIC HEARINGS

1. Vacate a Section Line Easement in the Cohoe area. Area under consideration is described as follows: Vacate those portions of the 33 foot and 50 foot Section Line Easements lying within Tracts I-1 and I-2 Davis-Mills Subdivision No 2, Plat KN 2015-95. A formal right-of-way dedication is being proposed along the eastern boundary of Tract I-2 to provide connectivity with the remaining Section Line Easements. The Section Line Easements being vacated are unconstructed and located within the SE1/4 of Section 3 and the NE/14 of Section 10, Township 2 North, Range 12 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough; KPB File 2018-008V.

STAFF REPORT

PC Meeting: 2/26/18

Purpose as stated in petition: The owners are petitioning to vacate the section line easement to resolve an encroachment after a survey showed that the owners' house is partially in the section line easement. Petitioner

Petitioners: John B Mills and Pauline Mills of Kasilof, AK.

Notification: Public notice was published in the February 15 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the Peninsula Clarion, Homer News, and Seward Journal the week of February 19 as part of the Commission's tentative agenda.

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The notice and maps were posted on the Borough web site and bulletin board.

Comments Received:

KPB Addressing Officer: 54310 MILLS POND AVE - will be retained on Tract I-1. New 60' ROW dedication needs a name approved by the addressing officer by final plat submittal. No objection to the vacation.

KPB Code Compliance: No comments.

KPB Planner: There are not any Local Option Zoning District issues with this proposed plat. Material Site Comments: There are not any material site issues with this proposed plat.

KPB Roads Department: No comments.

River Center: The proposed vacation is not within the Habitat Protection District; not within a flood hazard area.

State Department of Natural Resources: The DNR, DML&W Preliminary Decision (attached) giving contingent approval to the petition submitted by John & Pauline Mills to vacate portions of the 33 and 50-foot wide section-line easements (SLEs) lying within Tract I-1& I-2 Davis-Mills Subdivision requires a 100-foot wide ROW dedication. The preliminary plat included with your KPB 2018-008V notice depicts a 60-foot wide ROW dedication. Unless State agencies agree to a lesser width prior to approving a Final Decision, this 100' requirement will be carried over to DNR's Final Decision.

Please be aware that this section-line easement vacation will not receive final approval from DNR or DOT&PF unless it complies with DNR's Final Decision.

State Parks: No comments.

Homer Electric Association: No comments.

Alaska Communications Systems: No objections.

ENSTAR: No comments, recommendations or objections.

Staff Discussion:

Per KPB GIS mapping, the proposed vacation is not within a mapped flood hazard zone.

The preliminary plat submittal is incomplete as of this date. Once the submittal requirements have been met, the preliminary plat will be scheduled for Plat Committee review.

The State Department of Natural Resources issued a preliminary decision approving the proposed Section Line Easement Vacation Plat (EV-3-258) on December 28, 2017, subject to:

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. Dedication of the 100' ROW as depicted on Attachment A.
3. Comply with KPB's conditions of approval unless waived by the Director, DMLW.

Staff concurs with preserving connectivity between the constructed fee right-of-way (Toombs Avenue) and the section line easements. The section line easements are the only public access to the 160-acre parcel to the east. However, staff respectfully disagrees with requiring a 100-foot width for the right-of-way connecting Toombs Avenue and the section line easements. The intersection of the unnamed right-of-way being dedicated by the Section Line Easement Vacation Plat may not comply with KPB 20.30.150 so extra right-of-way or side slope easements per KPB 20.30.120 may be required in order to assure a smooth, safe transition between rights-of-way.

Based on the following, staff recommends the connecting right-of-way being dedicated by the subject plat be 60 feet wide with extra right-of-way or side slope easements being dedicated/granted as needed for the intersection based on:

1. Toombs Avenue is a KPB right-of-way, not a State right-of-way.
2. The KPB Roads Department issues permits to construct section line easements within KPB.
3. KPB maintained Carol Road connects Toombs Avenue to State maintained Cohoe Loop Road.
4. Cohoe Loop Road is approximately 2,600 feet away (approximately one-half mile) from the proposed section line easement vacation.
5. Although the adjoining and adjacent parcels are large, the area has several lakes, ponds, kettle, and drainage ways.
6. KPB GIS 4-foot contours shows several areas within the adjoining and adjacent large acreage parcels are subject to slopes greater than 20 percent.
7. Based on terrain constraints, it appears unlikely the large acreage parcels can be subdivided into small lots.
8. The minimum width for a standard KPB right-of-way is 60 feet per KPB 20.30.120.
9. The remaining section line easements are 33 feet and 50 feet wide, for a total width of 83 feet, not 100 feet.

Per KPB 20.70.220, the petitioner is responsible for all submittals required by the State of Alaska Department of Natural Resources (DNR) in compliance with their procedures. The petition must be reviewed and approved by the planning commission, but final authority for approval and platting of the vacation rests with DNR. The petitioner is responsible for coordination with DNR and submittals to DNR.

Findings

1. The proposed plat will provide a connecting fee right-of-way between Toombs Avenue and the remaining section line easements.
2. Connectivity between the section line easements and existing Toombs Avenue is required because the section line easements are the only public access available to the 160-acre parcel to the east.
3. Per KPB GIS 4-foot contours, terrain within the right-of-way proposed to be dedicated by the plat is not subject to steep slopes.
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13. The State Department of Natural Resources issued a preliminary, conditional approval of the Section Line Easement Vacation on December 28, 2017.

STAFF RECOMMENDATION: Based on Findings 1-13, staff recommends granting a four-year approval of the Section Line Easement Vacation, subject to:

1. Consent of the KPB Assembly.
2. Dedicate a 60-foot wide right-of-way with extra right-of-way or slope easements dedicated/granted at the intersection between Toombs Avenue and the remaining section line easements per KPB 20.30.150.
3. Submittal of the final State Easement Vacation Plat to the Planning Department within four years of vacation approval.
4. Compliance with any State requirements for the section line easement vacation (KPB 20.70.220).

NOTE: KPB 20.70.110. - Vacation consent—City council or assembly.

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KPB 20.70.120. - Action after denial of vacation petition.

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.**
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**

END OF STAFF REPORT

SECTION LINE EASEMENT VACATION CERTIFICATE APPROVAL RECOMMENDATION

STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

The vacation statement, as shown hereon, has been reviewed by the Central Region Office and is hereby recommended for approval by the Commissioner

Recommended by _____ Date _____

Title: Regional Chief Right-of-Way Agent

STATE OF ALASKA, DIVISION OF MINING, LAND, & WATER

The vacation statement, as shown hereon, has been reviewed by the Division of Mining, Land, and Water and is hereby recommended for approval by the Commissioner

Recommended by _____ Date _____



Title: Director, Division of Mining, Land, & Water

The State of Alaska, acting by and thru the Commissioner of the Department of Natural Resources and the Commissioner of the Department of Transportation and Public Facilities, does hereby state and declare that the State of Alaska vacates and releases all rights and title to any and those portions of the section line easement shown hereon (specific area delineated by diagonal hatching on this plat)

Date _____ Approved _____
Commissioner
Dept. of Transportation and Public Facilities

Date _____ Approved _____
Commissioner
Dept. of Natural Resources

LEGEND

-  Section Line Easement being vacated by this plat
-  1920 USGLO brass cap monument, Record, plat KRD 2016-95
-  1987 Aluminum monument, 7328-S, Record, plat KRD 2016-95.



SURVEYORS' CERTIFICATE

I hereby certify that I am properly registered and licensed to practice land surveying in the State of Alaska, and that this plat was drafted under my direct supervision, and that all data shown hereon is true and correct as compiled from existing record data

Date _____ 7328-S
Registration Number

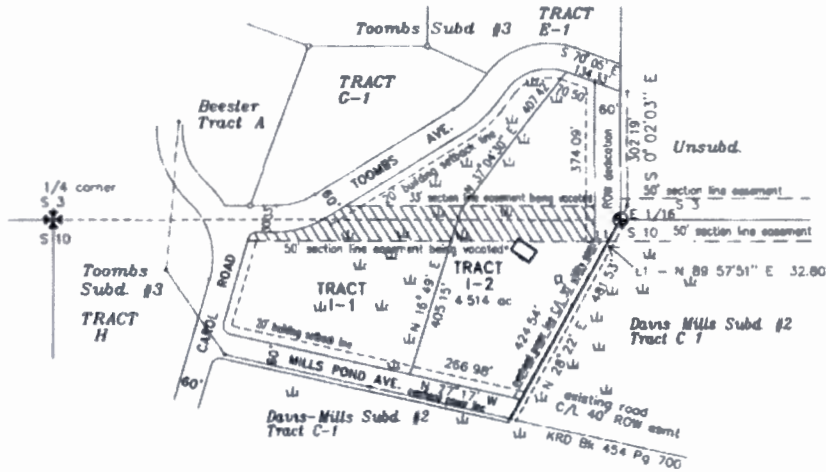
PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of _____

By _____ Date _____
Authorized Official

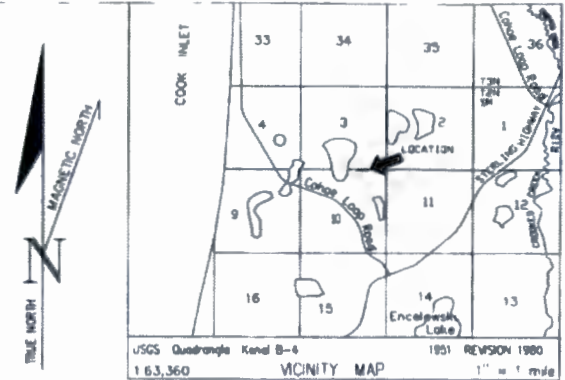
NOTES

1. Diagonally hatched area indicates the portion of the section line easement being vacated within Tracts 1-1 & 1-2 Davis-Mills Subd #2
2. No field survey has been conducted in relation to the preparation of this section line easement vacation plat. All dimensions and other details are from Davis-Mills Subd. #2 plat, filed with the Kenai District Recorder as plat #2015-95
3. This Vacation was approved by the Kenai Peninsula Borough Planning Commission at the meeting of _____
4. This section line easement Vacation is in compliance with the Final Decision approved _____
5. The alternate route in accordance with AS 19.30.410 are Toombs Avenue & Mills Pond Avenue.
6. As granted by KRD plat 2015-95, there is a 20' building setback fronting all street ROWs on these Tracts. Front 15' of building setback is also a utility easement, extending to 20' within 5' of side lot lines



PRELIMINARY PLAT SECTION LINE EASEMENT VACATION PLAT

Plat #	
Rec. Dist	
DATE	20__
TIME	__M



Magnetic Declination
19°28' E
NGDC 2005

CERTIFICATE OF OWNERSHIP & DEDICATION

We hereby certify that we are the owners of the real property shown and described hereon, and that we hereby approve this section line vacation plat and dedicate all ROWs and grant all easements to the use shown.

Date John B. Mills P.O. Box 260 Kenai, AK 99610

Date Pauline B. Mills P.O. Box 260 Kenai, AK 99610

NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn to before me this _____ day of _____, 2016.
For _____ and _____

Notary for Alaska
My commission expires _____

SCALE



DATE OF SURVEY	NAME OF SURVEYOR
Not field surveyed	Johnson Surveying P.O. Box 27 Clam Gulch, Ak99568
STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF MINING, LAND, & WATER Anchorage, AK.	
SECTION-LINE EASEMENT VACATION PLAT Associated With Davis-Mills Subd. #2 Tracts 1-1 & 1-2 Kenai Records Plat 2015-95 Located within SE1/4 Section 3 & NE1/4 Section 10, T2N R12W, Seward Meridian, Kenai Peninsula Borough, Alaska KENAI RECORDING DISTRICT	
Drawn by: GJJ Date 4-13-17	APPROVAL RECOMMENDED _____ Title: _____ Date _____
SCALE 1" = 200'	CHECKED KPB FILE NO. 2016-XXX FILE NO. EV-X-XXX

KPB 2018-008V



The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

Aerial View



Section Line Easement Vacation














JReif, KPB
Date: 2/1/2018

Kenai Peninsula Borough
Planning Department

Section Line Easement Vacation
associated with Davis-Mills
Subdivision #2



ECOSYSTEMS

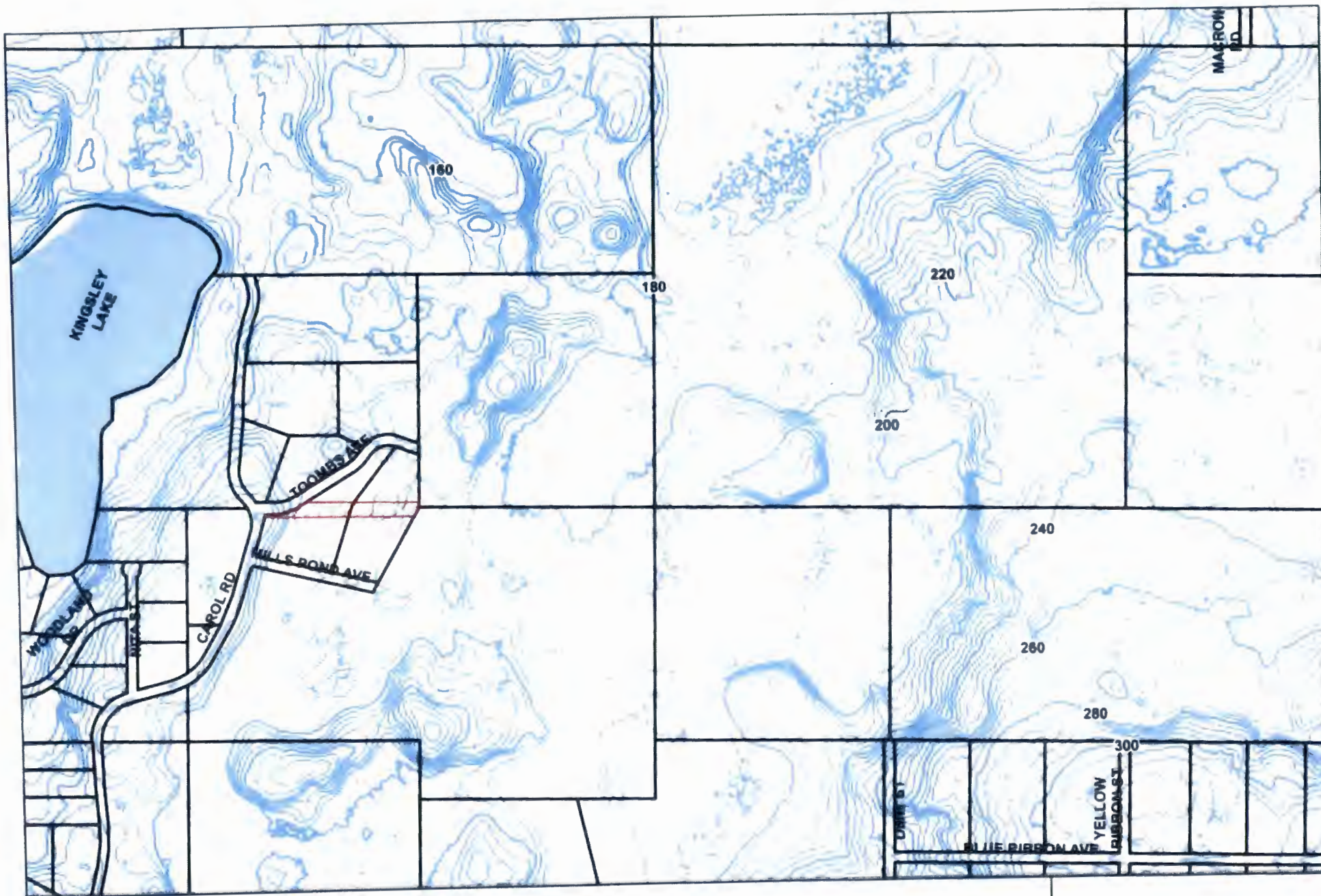
-  DISTURB
-  Depression
-  Discharge Slope
-  Drainageway
-  Floating Island
-  Headwater Fen
-  Kettle
-  LAKE
-  Lakebed
-  Late Snow Plateau
-  Riverine
-  Tidal
-  Wetland / Upland Complex



Date: 2/12/2018

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only of best available sources
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for any errors on this map





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Date: 2/12/2018

Kenai Peninsula Borough Planning Department

Four-foot Contours



From: [Horton, George C \(DNR\)](#)
To: [Reif, Jordan](#)
Cc: [Hoover, Patricia \(DOT\)](#); [Brown, Stanley C \(DNR\)](#); [Poydack, Joseph L \(DNR\)](#)
Subject: EV-3-258 -- DML&W Survey Sections reply to KPB Request for Comment
Date: Wednesday, February 07, 2018 9:00:33 AM
Attachments: [EV 3-258 Preliminary Decision.pdf](#)

Good morning Reif,

The DNR, DML&W Preliminary Decision (attached) giving contingent approval to the petition submitted by John & Pauline Mills to vacate portions of the 33 and 50-foot wide section-line easements (SLEs) lying within Tract I-1& I-2, Davis-Mills Subdivision requires a 100-foot wide ROW dedication. The preliminary plat included with your KPB 2018-008V notice depicts a 60-foot wide ROW dedication. Unless State agencies agree to a lesser width prior to approving a Final Decision, this 100' requirement will be carried over to DNR's Final Decision.

Please be aware that this section-line easement vacation will not receive final approval from DNR or DOT&PF unless it complies with DNR's Final Decision.

Thank you for the opportunity to comment.

Regards,

George

George Horton, PLS, CFedS
Land Surveyor I
(907) 269-8610

george.horton@alaska.gov

<http://dnr.alaska.gov/mlw/survey/index.htm>

"Do not go where the path may lead: go instead where there is no path and leave a trail." (Ralph Waldo Emerson)

From: Reif, Jordan [mailto:jreif@kpb.us]

Sent: Tuesday, February 06, 2018 1:10 PM

To: Eaton, Belinda L (DOT) <belinda.eaton@alaska.gov>; Biloon, Joselyn (DOT) <joselyn.biloon@alaska.gov>; Simpson, Danika L (DOT) <danika.simpson@alaska.gov>; Horton, George C (DNR) <george.horton@alaska.gov>; Rinke, Hans J (DNR) <hans.rinke@alaska.gov>; Kastner, Lorraine S (DOT) <lorraine.kastner@alaska.gov>; Hooyer, Patricia (DOT) <louise.hooyer@alaska.gov>; Fink, Mark J (DFG) <mark.fink@alaska.gov>; Vinzant, Mistee R (DOT) <mistee.vinzant@alaska.gov>; 'Neuendorf, Cody' <CNeuendorf@HomerElectric.com>; Byron Jackson <byron.jackson@acsalaska.com>; Bradley Beck <bbeck@gci.com>; ENSTAR ROW <row@enstarnaturalgas.com>; 'ivan@niniichiktribe-nsn.gov' <ivan@niniichiktribe-nsn.gov>; Browning, Roy <RBrowning@kpb.us>

Subject: SLE VACATION REVIEW FOR FEBRUARY 26, 2018 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI, CES, Niniichik Traditional Council

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

Preliminary Decision

Petitioner: John & Pauline Mills

Section Line Easement Vacation

EV-3-258

Petitioned Action:

The proposed action consists of vacating a portion of the 33 and 50-foot wide section-line easements (SLEs) lying within Tract I-1& I-2, Davis-Mills Subdivision (Plat 2015-95, Kenai Recording District), Sections 3 & 10, T2N, R12W, SM, as depicted in Attachment A.

The reason cited by the applicant: "House is partially in the section-line easement."

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-3-258 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 and 50-foot wide section-line easements exist within the subject property pursuant to Chapter 19, SLA 1923 and AS 19.10.010. (See Discussion 1).

Underlying Interest:

The petitioners own the estate underlying the SLEs proposed for vacation.

Alternate Route:

The proposed alternate access is the constructed 60' Carol Road and Toombs Avenue rights-of-way (ROWs) and a to be dedicated 100' ROW. Public access to adjoining & adjacent parcels is not negatively 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 not conducted. The subject SLE is unconstructed. It is unknown whether vehicles, pedestrians or other public interests have been or are using those portions of the SLE proposed to be vacated.

Practicality of Use:

The SLEs proposed to be vacated run along mostly level terrain and pass partially through wetlands. In addition, there is a home partially encroaching within the 50' SLE in Section 10. Sufficient dedicated public access exists and/or will be dedicated that provides access to the adjoining lands.

Agency Review:

Initial Agency review of the proposed action began on August 24, 2016 and concluded July 25, 2017. 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. Initial DOT/PF & SCRO concerns of connectivity were resolved by the petitioner agreeing to a dedication of a 100' ROW along the east boundary of Tract I-2.
2. All other agencies submitted comments of non-objection.
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 2 North, Range 12 West, Seward Meridian, Alaska was approved by the General Land Office on June 7, 1921 and accepted on January 6, 1922.
 - b. A review of the BLM Historical Index confirmed that the lands described below in "c", "d" & "e" were unappropriated and unreserved on April 6, 1923. Research verified that the subject lands were included in lands withdrawn for the Chugach National Forest by Proclamation No. 852 dated February 23, 1909. This National Forest withdrawal remained in effect until Proclamation No. 1519 dated April 16, 1919 eliminated certain lands from Chugach National Forest and restored said lands – including the subject lands – to entry. The subject lands were restored to homestead entry under applicable federal laws 84 days after the date Proclamation 1519 was signed (April 16 + 84 days = July 9, 1919).
 - c. The lands underlying the SLE proposed to be vacated in Gov't Lot 8, Section 3, were conveyed into private ownership by Patent No. 1216185. The date of entry (application filed) according to the case file abstract for BLM case file AKA 041002 was January 6, 1958. **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).
 - d. The lands underlying the SLE proposed to be vacated in NE1/4 of Section 10 were conveyed to the State of Alaska by US Patent 1217603, issued March 6, 1961. **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).
 - i. A 33-foot wide SLE exists underlying the 50' SLE noted above pursuant to Ch. 19, SLA 1923. It will also be vacated by this action.
 - e. The lands in SE1/4SE1/4 Section 3 immediately east of the proposed action were conveyed to the State of Alaska by US Patent 1225972, issued March 28, 1962. **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 adequately wide to satisfy all present and reasonable foreseeable uses. Continued access to adjacent lands is ensured by the remaining unconstructed SLEs, dedicated ROWs and a 100' to be dedicated ROW.

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. Dedication of the 100' ROW as depicted on Attachment A.

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

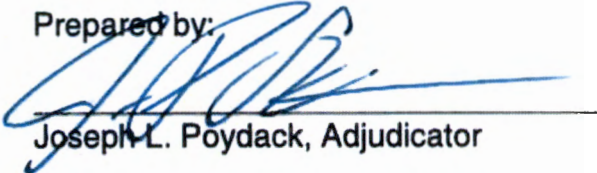
3. A final plat (owner signed / surveyor sealed Mylar) must be submitted to DNR within two years from the date of approval of the Final Decision unless extended by DMLW, Survey Section.

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.

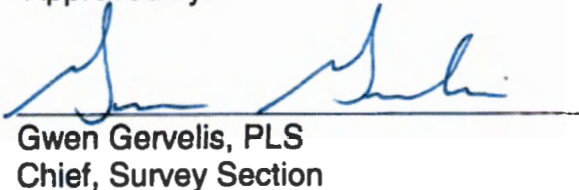
Prepared by:



Joseph L. Poydack, Adjudicator

27 December 2017
Date

Approved by:



Gwen Gervelis, PLS
Chief, Survey Section

December 28, 2017
Date

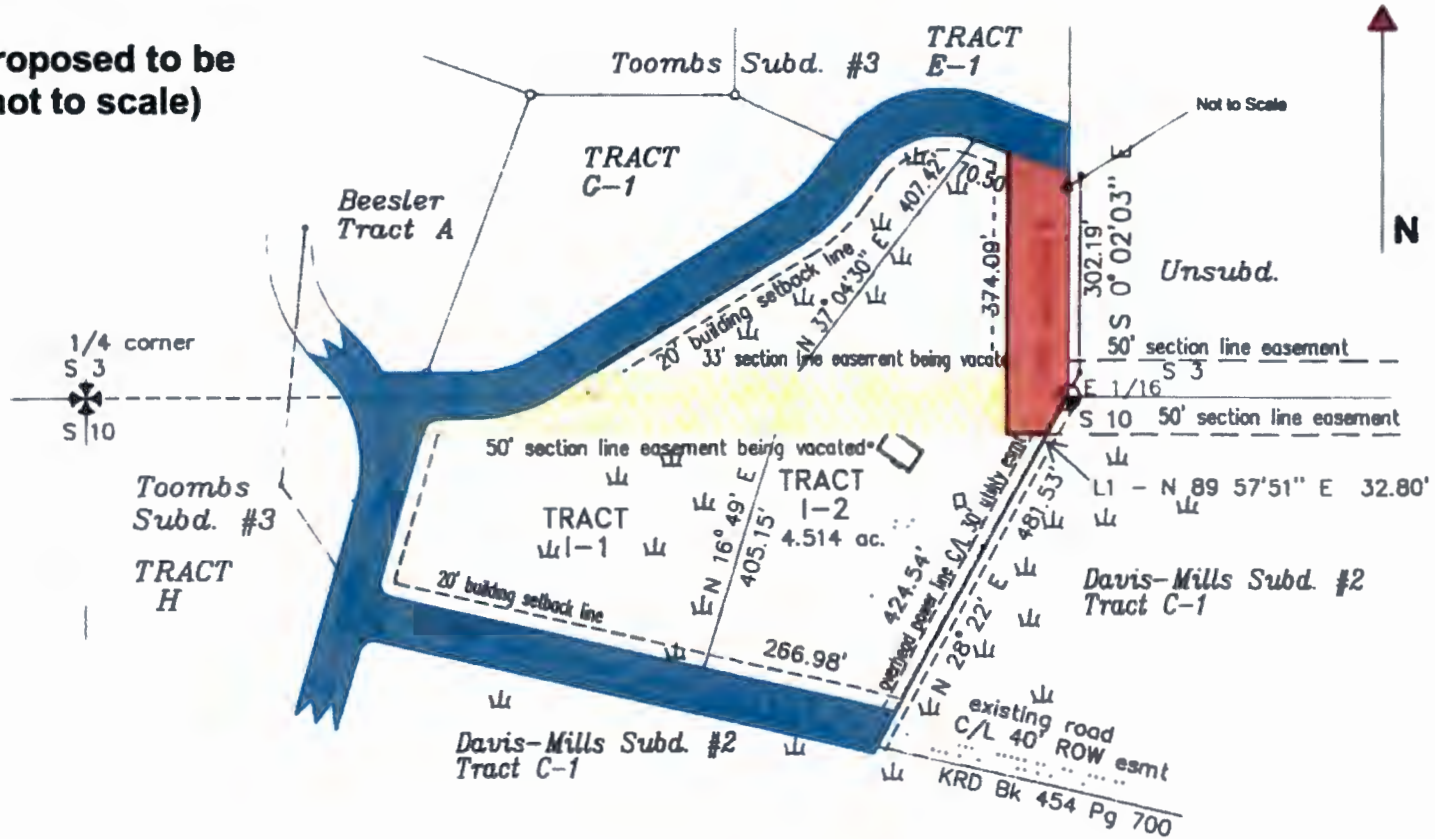
EV 3-258 Attachment A

Sections 3 & 10, T2N, R12W, SM

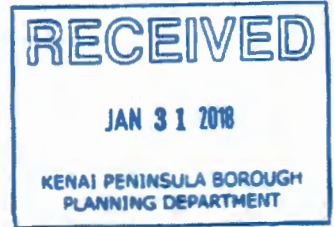
 SLEs Proposed to be Vacated

 Existing ROWs

 100' ROW Proposed to be Dedicated (not to scale)



Kenai Peninsula Borough Planning Department
 144 North Binkley Street
 Soldotna, Alaska 99669-7520
 Toll free within the Borough 1-800-478-4441, extension 2200 (907) 714-2200



**Petition to Vacate Section Line Easement
 Public Hearing Required**

Upon receipt of complete application with fees and all required attachments, a public hearing before the Planning Commission will be scheduled. The petition with all required information and attachments must be in the Planning Department at least 30 days prior to the preferred hearing date. By State Statute and Borough Code, the public hearing must be scheduled within 60 days of receipt of complete application.

The Kenai Peninsula Borough is advisory to the State of Alaska Department of Natural Resources regarding Section Line Easement Vacations. The State of Alaska has the final authority regarding vacation of Section Line Easements.

Initially, a sketch may be included with the vacation petition for review by the Planning Commission. After the Planning Commission takes action on the vacation, a Section Line Easement Vacation Plat must be prepared by a licensed land surveyor. The plat will be processed in accordance with KPB 20.10.080. Platting authority is vested in the Planning Director.

- \$500 non-refundable fee to help defray costs of advertising public hearing. Plat fees will be in addition to the vacation fees.
 - City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
 - Are there associated utility easements to be vacated? Yes No
 - Are easements in use by any utility company? If so, which company _____
 - Width of easement proposed to be vacated must be shown on the sketch.
 - Submit three copies of plat or map showing area proposed to be vacated. Must not exceed 11x17 inches in size. Proposed alternative dedication is to be shown and labeled on the sketch.
 - Has the section line easement been fully or partially constructed? Yes No
 - Is the section line easement used by vehicles / pedestrians / other? Yes No
 - Is alternative right-of-way being provided? Yes No
- The petitioner must provide reasonable justification for the vacation. Reason for vacating:

A survey indicated that our house was partially in the section line. ~~XXXXXXXXXX~~

The petition must be signed (written signature) by owners of a majority of the land affected by the section line easement proposed to be vacated. Each petitioner must include address and legal description of his/her property.

Submitted By: Signature [Signature] As: Petitioner Representative
 Name Tina Mills
 Address 34310 Mills Road Ave
PO Box 260
Kenai AK 99610
 Phone (907) 252-6262

Petitioners:
 Signature [Signature] Signature _____
 Name Tina Mills Name _____
 Address PO Box 260 Address _____
Kenai AK 99610
 Owner of 907 252-6262 Owner of _____

Signature _____ Signature _____
 Name _____ Name _____
 Address _____ Address _____

 Owner of _____ Owner of _____