


Kenai Peninsula Borough Planning Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Max Best, Planning Director 

DATE: December 19, 2019

RE: Vacate a 100-foot wide Section Line Easement running east to west within US Survey 14477 described as a 50-foot section line easement within Section 27 and a 50-foot section line easement within Section 34. The section line easement being vacated is unconstructed and located within Sections 27 and 34, Township 5 North, Range 4 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-138V. Petitioner: Mary J. Dreifuerst of Cooper Landing, 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 December 16, 2019, the Kenai Peninsula Borough Planning Commission granted approval of the proposed section line easement vacation by unanimous consent based on the means of evaluating public necessity established by KPB 20.70. This petition is being sent to you for your consideration and action.

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

AGENDA ITEM F. PUBLIC HEARINGS

4. Vacate a 100-foot wide Section Line Easement running east to west within US Survey 14477 described as a 50-foot section line easement within Section 27 and a 50-foot section line easement within Section 34. The section line easement being vacated is unconstructed and located within Sections 27 and 34, Township 5 North, Range 4 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-138V.

Staff Report given by Scott Huff

PC Meeting: December 16, 2019

Purpose as stated in petition: The justification for vacating the section line easements is that it will not change the existing highway nor will it keep anyone from using the adjoining properties. Because the Sterling Highway has been in place for many years, the section line between sections 27 and 34 Township 5 North Range 4 West, Seward Meridian, in this area will never be needed for a right of way. The existing Sterling Highway is parallel to the southern boundary of this property and when this property was surveyed it was staked with enough room for expansion of the existing highway if it should be needed. Chugach National Forest is on the other three sides of this property so access to any of the land around it is not a problem. And as you can see on the drawing of the USS No 14477, the 100' section line easement covers most of the improvements on this property.

Petitioners: Mary J. Dreifuerst of Cooper Landing, AK.

Notification: Public notice appeared in the December 5, 2019 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the December 12, 2019 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

Public hearing notices were sent by regular mail to two owners within 600 feet of the proposed vacation.

19 public hearing notices were emailed to agencies and interested parties.

Public hearing notices were made available to 6 KPB staff/Departments via a shared database.

Notices were mailed to the Cooper Landing Post Office and Cooper Landing Community Library with a request to be posted in public locations.

The notice and maps were posted on the Borough bulletin board and Planning Department public hearing notice web site.

Comments Received:

ACS: No comments were available at the time the staff report was prepared.

Chugach Electric Association: No objection. Please be advised that Chugach does have overhead distribution facilities crossing the parcel in an approximate east-west orientation, not affected by the proposed easement vacation.

ENSTAR: Reviewed the section line easement vacation request and has no comments, recommendations or objections.

Homer Electric Association: No comments were available at the time the staff report was prepared.

KPB Addressing: No changes to the address. The address will remain on the existing lot.

KPB Planning: There are no material site issues or local option zoning issues associated with this right of way vacation. The KPB planner attached a memo which states, *Goal 3, Focus Area – Energy and Utilities, Objective A, Strategy 1, of the 2019 Kenai Peninsula Borough Comprehensive Plan states, "Maintain*

existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.'

KPB River Center: Not within a flood hazard area. Not within the Habitat Protection District.

KPB Roads Department: Within KPB jurisdiction, no comments.

Cooper Landing Advisory Planning Commission: Not available at the time the staff report was prepared.

State Parks: No comments.

TelAlaska: No comments were available at the time the staff report was prepared.

Staff Discussion: US Survey 14477 created a 2.00 acre parcel within the Chugach National Forest, approximately 1 mile east of the confluence of the Russian River and the Kenai River. The two acre parcel was patented from the Federal Government to the State of Alaska on January 31, 2018 and then patented from the State to Ms. Dreifuerst on July 6, 2019. The State claims a 100' wide section line easement on the section line common to Sections 27 and 34 that crosses the middle of the 2 acre parcel.

If approved, Section Line Easement Vacation Plat Associated with US Survey 14477 KPB 2019-138 will finalize the proposed section line easement vacation. The Plat Committee is tentatively scheduled to review KPB 2019-138 on January 6, 2020.

The State of Alaska granted preliminary approval to the vacation on October 8, 2019 (DNR Survey Case File EV-3-302) with conditions that include "Document the existence of an easement along the powerline, or dedicate an easement of sufficient width."

KPB 20.70 – Vacation Requirements.

Platting staff comments: *Staff reviewed the vacation and all the items required by 20.70 were met, unless otherwise noted below:*

20.70.050. Petition—Information required.

- B. Persons listed on the borough assessor's tax roll shall be deemed the legal owners for purposes of the vacation petition. **The petition shall include a statement containing the reasons in support of the vacation** and be accompanied by a minimum of three copies of a sketch clearly indicating the proposed vacation, submitted to the planning department at least 30 calendar days in advance of the meeting at which it will be considered. In cases where encroachments on public rights-of-way are in question, an as-built survey, sealed by a surveyor, is required showing the improvements, existing travelways, amount of encroachment, and any other submittal as requested by the planning commission. **The burden of proof shall lie with the petitioner to support the vacation.**

Petitioner Comments: *The justification for vacating the section line easements is that it will not change the existing highway nor will it keep anyone from using the adjoining properties. Because the Sterling Highway has been in place for many years, the section line between sections 27 and 34 Township 5 North Range 4 West, Seward Meridian, in this area will never be needed for a right of way. The existing Sterling Highway is parallel to the southern boundary of this property and when this property was surveyed it was staked with enough room for expansion of the existing highway if it should be needed. Chugach National Forest is on the other three sides of this property so access to any of the land around it is not a problem. And as you can see on the drawing of the USS No 14477, the 100' section line easement covers most of the improvements on this property.*

20.70.130. Vacation plat—Preparation, approval and recording. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent in KPB 20.70.110.

Platting Staff Comments: A preliminary plat, KPB 2019-138, was submitted and is tentatively scheduled to be heard by the Plat Committee on January 6, 2020.

Staff recommendation: *Comply with KPB 20.70.130.*

20.70.170. Vehicular Access. The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential use.

Platting Staff Comments: Per the submittal, the section line easement is not constructed and in not use for vehicular access.

The parcel is surrounded on three sides by the Chugach National Forest and on the fourth by the Sterling Highway. Per the DNR preliminary decision, no section line easement exists east or west of the proposed vacation. Per the submittal and aerial imagery, several structures exist within the majority of the section line easements, stretching across the full 100' width of the easement.

Superior vehicular access exists approximately 30' to 125' to the south on the constructed, DOT maintained Sterling Highway right-of-way that runs generally parallel to the easement. The large acreage parcel part of the Chugach National Forest is provided access by the Sterling Highway and is not provided access by the subject section line easement.

Staff recommendation: *Concur that superior vehicular access exists within the Sterling Highway right-of-way.*

20.70.180. Other access. Other lawful uses that exist or are feasible for the right-of-way shall be considered when evaluating a vacation request. When such uses exist or could exist within rights-of-way which are not suited for general road use, the commission shall not approve the vacation request, unless it can be demonstrated that equal or superior access is or will be available. The planning commission shall consider whether alternate uses present public safety issues which support approval of the vacation.

Platting Staff Comments: Per the submittal, the section line easement is not in use for pedestrian or other uses.

KPB four foot contours indicate the easement is relatively flat. Kenai Watershed Forum Wetland mapping indicate that the easternmost portion of the easement is affected by kettle wetlands. As noted above, several structures preclude general road use within the easement. In addition, the structures will generally preclude other uses. A pedestrian could, in theory walk through the National Forest, across the parcel on the section line easement, and back into the National Forest. However, superior access exists in the Sterling Highway right-of-way to the south.

Staff recommendation: *Concur that superior access for other uses exists within the Sterling Highway right-of-way.*

20.70.190. Utility provisions. All existing and future utility requirements shall be considered when evaluating a vacation request. Rights-of-way which are utilized by a public utility or which logically would be required by a public utility shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a public utility easement be granted in place of the right-of-way.

Platting Staff Comments: Per the submittal, an overhead utility line crosses the parcel and a portion of the section line easement. Per the DNR preliminary approval, the petitioner must "Document the existence of an easement along the power line, or dedicate an easement of sufficient width."

No other public need exists for this section line easement. The easement does not continue to the east or west beyond the approximately 340' stretch within the subject parcel and runs generally parallel to the Sterling Highway right-of-way to the south which provides superior access. The existing powerline only crosses a portion of the section line easement proposed to be vacated. An easement on the existing overhead lines would satisfactorily serve the utility interests.

Staff recommendation:

- Grant a 20' utility easement centered on the existing overhead lines within the parcel.
- Concur that an easement granted on existing overhead lines will satisfactorily serve the utility interests and that superior utility access is available in the Sterling Highway right-of-way.

20.30.220. Section line easement vacations. Section line easement vacation petitions must comply with the requirements of KPB 20.70.040, 20.70.050 and 20.70.060. A fee is required in compliance with KPB 20.70.060. Public hearing and notice must comply with the requirements of KPB 20.70.070, 20.70.080, 20.70.100, 20.70.110 and 20.70.120. The mail notice required in KPB 20.70.090 may be by regular mail. Publication on the planning commission agenda, advertised once in local papers, posted in public areas and on the borough website prior to the meeting will satisfy the publishing requirements. 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.

Staff recommendation: Comply with KPB 20.30.220.

STAFF RECOMMENDATION: Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff comments, staff recommends approval to vacate any interest the borough may have in the section line easement subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by DNR and utility providers.
4. Submittal of a final plat.

KPB 20.70.110:

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:

- 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

Mr. Huff noted that the Cooper Landing Advisory Planning Commission heard this item on December 4, 2019 and minutes were included in the desk packet. He added that on page 83 and 84 of the packet there was an aerial image that shows the section line easement crossing the middle of the lot, the highway frontage on the south side, and the forest service lands surrounding the rest of the parcel.

Chairman Martin asked if anyone from the public wished to comment on this item. Seeing and hearing no one wishing to comment, Chairman Martin closed public comment and opened discussion among the Commission.

MOTION: Commissioner Morgan moved, seconded by Commissioner Venuti, to approve the vacation of the 100-foot wide section line easement as petitioned, subject to staff recommendations and compliance with borough code.

Commissioner Carluccio felt that the Cooper Landing Advisory Planning Commission was not in favor of the vacation without some type of compensation. Commissioner Morgan said the way she understood it was that they did not see a reason deny this vacation but vacations should not be taken lightly.

Commissioner Carluccio is generally not in favor of vacationing section line easements. She does not see if the section line easement continues on both sides of the property. Mr. Huff responded that the section line has not been surveyed. There is a protraction diagram that draws dotted lines for all the sections and if the state takes ownership of property with protracted section lines, a 50-foot section line easement is placed on it. This property went from federal to state and then to private ownership. As soon as the ownership changed to the state a 50-foot section line easement was placed on the line even though it was not officially surveyed. Commissioner Carluccio stated that it is was not officially surveyed but someone built a house on it. Mr. Huff said the property was surveyed as part of the US Survey but the section corners have not been set to define the section lines. The true location of the section line easement is not known until officially surveyed.

Commissioner Ecklund said that one of the Cooper Landing Advisory Planning Commission members made a statement that there should be some type of transfer. In the past when asking for a vacation, compensation is given by dedicating a portion of the property as a park, pathway, access, or easement. In this case, there is nothing that needs access. She asked staff if the property was developed while still under federal ownership. Mr. Huff said the improvements have been there for a long time from when it was federal property. To get it to private ownership it had to transfer to the state first and that is when the section line easement was put in place. The state is particular when vacating section line easements. Equal or superior access has to be somewhere else. The state has already agreed to this.

Mr. Best added that the longevity of the improvements go well beyond most of the people in Cooper Landing. This was a federal lease to Bill Fuller and his wife from a long time ago.

MOTION PASSED: Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

F. PUBLIC HEARINGS

- 4. 100-foot wide Section Line Easement
Vacation in the Cooper Landing area.
KPB File 2019-138V
Petitioner: Mary J. Dreifuerst**

AGENDA ITEM F. PUBLIC HEARINGS

4. Vacate a 100-foot wide Section Line Easement running east to west within US Survey 14477 described as a 50-foot section line easement within Section 27 and a 50-foot section line easement within Section 34. The section line easement being vacated is unconstructed and located within Sections 27 and 34, Township 5 North, Range 4 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-138V.

STAFF REPORT

PC Meeting: 12/16/19

Purpose as stated in petition: The justification for vacating the section line easements is that it will not change the existing highway nor will it keep anyone from using the adjoining properties. Because the Sterling Highway has been in place for many years, the section line between sections 27 and 34 Township 5 North Range 4 West, Seward Meridian, in this area will never be needed for a right of way. The existing Sterling Highway is parallel to the southern boundary of this property and when this property was surveyed it was staked with enough room for expansion of the existing highway if it should be needed. Chugach National Forest is on the other three sides of this property so access to any of the land around it is not a problem. And as you can see on the drawing of the USS No 14477, the 100' section line easement covers most of the improvements on this property.

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Comments Received:

ACS: No comments were available at the time the staff report was prepared.

Chugach Electric Association: No objection. Please be advised that Chugach does have overhead distribution facilities crossing the parcel in an approximate east-west orientation, not affected by the proposed easement vacation.

ENSTAR: Reviewed the section line easement vacation request and has no comments, recommendations or objections.

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KPB Addressing: No changes to the address. The address will remain on the existing lot.

KPB Planning: There are no material site issues or local option zoning issues associated with this right of way vacation. The KPB planner attached a memo which states, *Goal 3, Focus Area – Energy and*

Utilities, Objective A, Strategy 1, of the 2019 Kenai Peninsula Borough Comprehensive Plan states, "Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs."

KPB River Center: Not within a flood hazard area. Not within the Habitat Protection District.

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KPB 20.70 – Vacation Requirements.

Platting staff comments: *Staff reviewed the vacation and all the items required by 20.70 were met, unless otherwise noted below:*

20.70.050. Petition—Information required.

- B. Persons listed on the borough assessor's tax roll shall be deemed the legal owners for purposes of the vacation petition. **The petition shall include a statement containing the reasons in support of the vacation** and be accompanied by a minimum of three copies of a sketch clearly indicating the proposed vacation, submitted to the planning department at least 30 calendar days in advance of the meeting at which it will be considered. In cases where encroachments on public rights-of-way are in question, an as-built survey, sealed by a surveyor, is required showing the improvements, existing travelways, amount of encroachment, and any other submittal as requested by the planning commission. **The burden of proof shall lie with the petitioner to support the vacation.**

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20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent in KPB 20.70.110.

Platting Staff Comments: A preliminary plat, KPB 2019-138, was submitted and is tentatively scheduled to be heard by the Plat Committee on January 6, 2020.

Staff recommendation: Comply with KPB 20.70.130.

20.70.170. Vehicular Access. The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential use.

Platting Staff Comments: Per the submittal, the section line easement is not constructed and in not use for vehicular access.

The parcel is surrounded on three sides by the Chugach National Forest and on the fourth by the Sterling Highway. Per the DNR preliminary decision, no section line easement exists east or west of the proposed vacation. Per the submittal and aerial imagery, several structures exist within the majority of the section line easements, stretching across the full 100' width of the easement.

Superior vehicular access exists approximately 30' to 125' to the south on the constructed, DOT maintained Sterling Highway right-of-way that runs generally parallel to the easement. The large acreage parcel part of the Chugach National Forest is provided access by the Sterling Highway and is not provided access by the subject section line easement.

Staff recommendation: Concur that superior vehicular access exists within the Sterling Highway right-of-way.

20.70.180. Other access. Other lawful uses that exist or are feasible for the right-of-way shall be considered when evaluating a vacation request. When such uses exist or could exist within rights-of-way which are not suited for general road use, the commission shall not approve the vacation request, unless it can be demonstrated that equal or superior access is or will be available. The planning commission shall consider whether alternate uses present public safety issues which support approval of the vacation.

Platting Staff Comments: Per the submittal, the section line easement is not in use for pedestrian or other uses.

KPB four foot contours indicate the easement is relatively flat. Kenai Watershed Forum Wetland mapping indicate that the easternmost portion of the easement is affected by kettle wetlands. As noted above, several structures preclude general road use within the easement. In addition, the structures will generally preclude other uses. A pedestrian could, in theory walk through the National Forest, across the parcel on the section line easement, and back into the National Forest. However, superior access exists in the Sterling Highway right-of-way to the south.

Staff recommendation: Concur that superior access for other uses exists within the Sterling Highway right-of-way.

20.70.190. Utility provisions. All existing and future utility requirements shall be considered when evaluating a vacation request. Rights-of-way which are utilized by a public utility or which logically would be required by a public utility shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a public utility easement be granted in place of the right-of-way.

Platting Staff Comments: Per the submittal, an overhead utility line crosses the parcel and a portion of the section line easement. Per the DNR preliminary approval, the petitioner must "Document the existence of an easement along the power line, or dedicate an easement of sufficient width."

No other public need exists for this section line easement. The easement does not continue to the east or west beyond the approximately 340' stretch within the subject parcel and runs generally parallel to the

Sterling Highway right-of-way to the south which provides superior access. The existing powerline only crosses a portion of the section line easement proposed to be vacated. An easement on the existing overhead lines would satisfactorily serve the utility interests.

Staff recommendation:

- *Grant a 20' utility easement centered on the existing overhead lines within the parcel.*
- *Concur that an easement granted on existing overhead lines will satisfactorily serve the utility interests and that superior utility access is available in the Sterling Highway right-of-way.*

20.30.220. Section line easement vacations. Section line easement vacation petitions must comply with the requirements of KPB 20.70.040, 20.70.050 and 20.70.060. A fee is required in compliance with KPB 20.70.060. Public hearing and notice must comply with the requirements of KPB 20.70.070, 20.70.080, 20.70.100, 20.70.110 and 20.70.120. The mail notice required in KPB 20.70.090 may be by regular mail. Publication on the planning commission agenda, advertised once in local papers, posted in public areas and on the borough website prior to the meeting will satisfy the publishing requirements. 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.

Staff recommendation: *Comply with KPB 20.30.220.*

STAFF RECOMMENDATION: Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff comments, staff recommends approval to vacate any interest the borough may have in the section line easement subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by DNR and utility providers.
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KPB 20.70.120:

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- 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 REGIONAL OFFICE AND IS HEREBY RECOMMENDED FOR APPROVAL BY THE COMMISSIONER.

RECOMMENDED BY _____ DATE _____
TITLE: REGIONAL RIGHTS-OF-WAY AGENT

STATE OF ALASKA DIVISION OF MINING, LAND & WATER

THE VACATION STATEMENT AS SHOWN HEREON, HAS BEEN REVIEW BY THE DIVISION OF MINING, LAND & 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 THROUGH 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 ALL PORTIONS OF SECTION-LINE EASEMENTS FOR PUBLIC HIGHWAYS RESERVED TO IT UNDER A.S. 18.10.010 (SPECIFIC AREA DELINEATED BY DIAGONAL HATCHING ON THIS PLAT.)

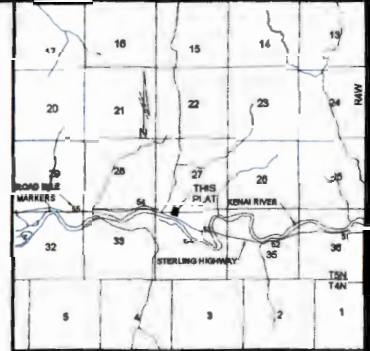
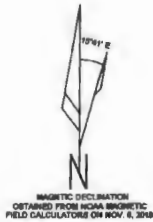
DATE _____ APPROVED: _____

COMMISSIONER
DEPARTMENT OF TRANSPORTATION AND
PUBLIC FACILITIES

DATE _____ APPROVED: _____

COMMISSIONER
DEPARTMENT OF NATURAL RESOURCES

LEGEND
● FOUND BLM BC MONUMENT
ON OCT. 8, 2018
1 CORNER NUMBER10



VICINITY MAP
1" = 1 MILE

CERTIFICATE OF OWNERSHIP:
I (WE) THE UNDERSIGNED, CERTIFY THAT I AM (WE ARE) THE OWNER(S) OF U.S. SURVEY #14477 AS SHOWN ON THE PLAT. I (WE) APPROVE THIS SECTION-LINE EASEMENT VACATION PLAT.

DATE _____ (OWNERS NAME AND ADDRESS)

NOTARY'S ACKNOWLEDGEMENT
SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY
OF _____, 2018.
BY: _____

NOTARY FOR THE STATE OF ALASKA
MY COMMISSION EXPIRES _____



TAX CERTIFICATE
AT THE TIME OF FILING, THIS SUBDIVISION LIES WITHIN THE KENAI PENINSULA BOROUGH TAXING AUTHORITY.

PLAT APPROVAL
THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION IN ACCORDANCE WITH KPB 20.04.080 AT THE MEETING OF _____

BOROUGH OFFICIAL _____

NOTES
1. DIAGONALLY HATCHED AREA INDICATES PORTION OF THE SECTION-LINE EASEMENT BEING VACATED WITHIN SECTIONS 27 AND 34, TOWNSHIPS NORTH, RANGE 4 WEST, SEWARD MERIDIAN, ALASKA. IT IS NOT THE INTENT OF THIS PLAT TO BVACATE ANY OTHER DEDICATED PUBLIC RIGHTS-OF-WAY OR EASEMENTS.
2. NO FIELD SURVEY HAS BEEN CONDUCTED IN RELATION TO THE PREPARATION OF THIS SECTION-LINE EASEMENT VACATION PLAT. ALL DIMENSION AND OTHER DETAILS AS SHOWN HEREON ARE FROM THE PLAT OF U.S. SURVEY #14477.
3. THIS SECTION-LINE EASEMENT VACATION IS IN COMPLIANCE WITH THE FINAL DECISION EV-3-302 APPROVED _____



SURVEYOR'S 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 INFORMATION.
DATE _____ BRYAN E. COOPER, LS 5733 REGISTERED LAND SURVEYOR REGISTRATION NO. _____

Date of survey: NO FIELD SURVEY	NAME OF SURVEYOR: COOPER AND COMPANY, P.O. Box 709, Cooper Landing, Alaska 99572 (907) 248-1504 or (907) 565-1924
Drawn by: BEC	Date: Nov 7, 2019
STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF MINING, LAND & WATER ANCHORAGE, ALASKA	
SECTION-LINE EASEMENT VACATION PLAT U.S. SURVEY #14477 Associated With: SECTIONS 27 & 34, T5N, R4W, SEWARD MERIDIAN, ALASKA SEWARD RECORDING DISTRICT	
Drawn by: BEC Date: 1/7/19	APPROVAL RECOMMENDED: Suzanne Plating Supervisor Date: _____
SCALE: 1" = 80'	Checked: JBC DNR FILE NO: EV-3-302

KPB 2019-138V

MAP OF AS-BUILT SURVEY
OF
U. S. SURVEY NO. 14477

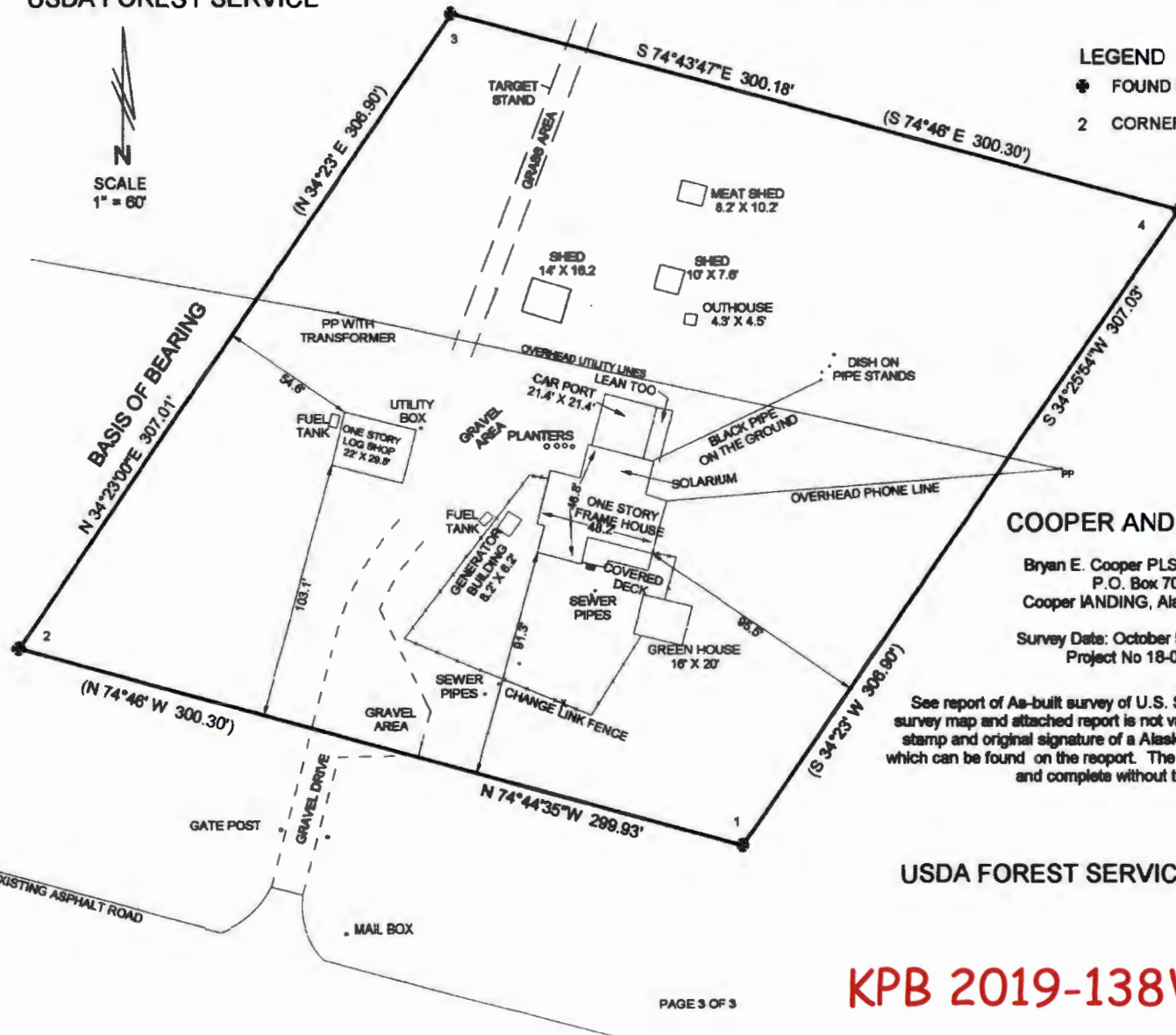
USDA FOREST SERVICE

USDA FOREST SERVICE



LEGEND

- FOUND BLM BC MONUMENT
- 2 CORNER NUMBER



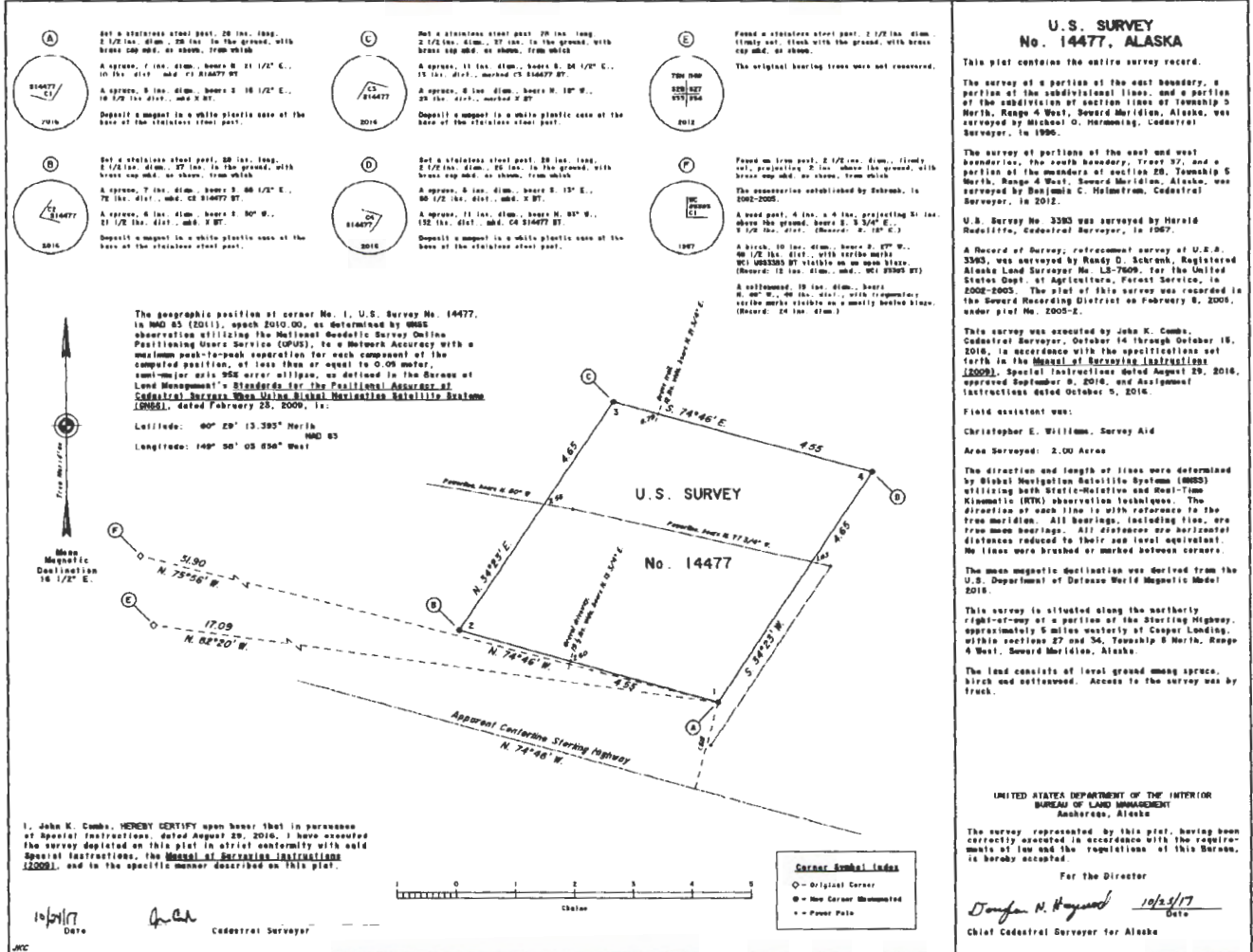
COOPER AND COMPANY

Bryan E. Cooper PLS #LS 5733
P.O. Box 709
Cooper LANDING, Alaska 99572
Survey Date: October 5 & 6, 2018
Project No 18-08-05

See report of As-built survey of U.S. Survey No. 14477. This survey map and attached report is not valid without the surveyor's stamp and original signature of a Alaska licensed land surveyor which can be found on the report. The map and report are not full and complete without the other.

USDA FOREST SERVICE

KPB 2019-138V



(A) Set a stainless steel post, 20 lbs. long, 1 1/2 in. diam., 20 lbs. in the ground, with brass cap and as shown, from which
A spruce, 7 in. diam., bears S 21 1/2° E., 10 1/2 in. dist., marked X BT.
Deposit a magnet in a white plastic case at the base of the stainless steel post.

(B) Set a stainless steel post, 20 lbs. long, 1 1/2 in. diam., 20 lbs. in the ground, with brass cap and as shown, from which
A spruce, 7 in. diam., bears S 68 1/2° E., 7 1/2 in. dist., marked X BT.
A spruce, 6 in. diam., bears S 90° W., 21 1/2 in. dist., marked X BT.
Deposit a magnet in a white plastic case at the base of the stainless steel post.

(C) Set a stainless steel post, 20 lbs. long, 1 1/2 in. diam., 20 lbs. in the ground, with brass cap and as shown, from which
A spruce, 11 in. diam., bears S 24 1/2° E., 15 in. dist., marked X BT.
A spruce, 8 in. diam., bears N 12° W., 25 in. dist., marked X BT.
Deposit a magnet in a white plastic case at the base of the stainless steel post.

(D) Set a stainless steel post, 20 lbs. long, 1 1/2 in. diam., 20 lbs. in the ground, with brass cap and as shown, from which
A spruce, 8 in. diam., bears S 15° E., 20 1/2 in. dist., marked X BT.
A spruce, 10 in. diam., bears N 83° W., 132 in. dist., marked X BT.
Deposit a magnet in a white plastic case at the base of the stainless steel post.

(E) Found a stainless steel post, 1 1/2 in. diam., firmly set, flush with the ground, with brass cap and as shown.
The original bearing trees were not recovered.

(F) Found an iron post, 2 1/2 in. diam., firmly set, projecting 2 in. above the ground, with brass cap and as shown, from which
The corner established by Subcom. is 1902-2005.
A wood post, 4 in. x 4 in., projecting 2 in. above the ground, bears S 3 3/4° E., 1 1/2 in. dist. (Bearing: S 10° E.).
A birch, 10 in. diam., bears S 67° W., 40 1/2 in. dist., with white marks (MC) 005330 BT visible on an open blaze (Bearing: 12 in. diam., marked X BT) (Bearing: 24 in. diam.)

The geographic position of corner No. 1, U.S. Survey No. 14477, in NAD 83 (2011), epoch 2010.00, as determined by GNSS observation utilizing the National Geodetic Survey Continuously Operating Reference Station (CORS), to a Network Accuracy with a maximum peak-to-peak separation for each component of the computed position, of less than or equal to 0.09 meter, semi-major axis 95% error ellipse, as defined in the Bureau of Land Management's Standards for the Positional Accuracy of Cadastral Surveys Done Using Global Navigation Satellite Systems (GNSS), dated February 25, 2000, is:
Latitude: 60° 29' 13.395" North
Longitude: 149° 08' 03.856" West

Magn. Magnetic Declination 16 1/2° E.

51.90
N 75° 56' W

17.09
N 82° 20' W

Apparent Centerline Starting Highway
N 74° 46' W

U.S. SURVEY
No. 14477

Parallels bears N 50° W
Parallels bears N 77 1/2° E
N 84° 20' W
S 84° 20' W
N 74° 46' E
S 74° 46' E

I, John K. Combs, HEREBY CERTIFY upon being that in pursuance of Special Instructions, dated August 29, 2016, I have executed the survey depicted on this plat in strict conformity with said Special Instructions, the Manual of Surveying Instructions (2009), and in the specific manner described on this plat.

10/23/17
Date
J.K.C.
Cadastral Surveyor

Corner Symbol Index
○ - Original Corner
● - New Corner Monumented
+ - Power Pole

0 1 2 3 4 5
Chains

**U.S. SURVEY
No. 14477, ALASKA**

This plat contains the entire survey record.

The survey of a portion of the east boundary, a portion of the subdivision lines, and a portion of the subdivision at section lines of Township 5 North, Range 4 West, Seward Meridian, Alaska, was surveyed by Michael O. Hermoning, Cadastral Surveyor, in 1996.

The survey of portions of the east and west boundaries, the south boundary, Tract 37, and a portion of the boundary of section 28, Township 5 North, Range 4 West, Seward Meridian, Alaska, was surveyed by Benjamin C. Holmstrom, Cadastral Surveyor, in 2012.

U.S. Survey No. 3383 was surveyed by Harold Redcliffe, Cadastral Surveyor, in 1967.

A Record of Survey, retrocommenced survey of U.S.S. 3383, was surveyed by Randy D. Schrank, Registered Alaska Land Surveyor No. LS-7609, for the United States Dept. of Agriculture, Forest Service, in 2002-2003. The plat of this survey was recorded in the Seward Recording District on February 9, 2005, under plat No. 2005-2.

This survey was executed by John K. Combs, Cadastral Surveyor, October 14 through October 18, 2016, in accordance with the specifications set forth in the Manual of Surveying Instructions (2009). Special Instructions dated August 29, 2016, approved September 8, 2016, and Assignment Instructions dated October 5, 2016.

Field assistant was:
Christopher E. Williams, Survey Aid

Area Surveyed: 2.00 Acres

The direction and length of lines were determined by Global Navigation Satellite System (GNSS) utilizing both Static-Relative and Real-Time Kinematic (RTK) observation techniques. The direction of each line is with reference to the true meridian. All bearings, including ties, are from mean bearings. All distances are horizontal distances reduced to their sea level equivalent. No lines were brushed or marked between corners.

The mean magnetic declination was derived from the U.S. Department of Defense World Magnetic Model 2015.

This survey is situated along the easterly right-of-way of a portion of the Starting Highway, approximately 5 miles westerly of Cooper Landing, within sections 27 and 36, Township 5 North, Range 4 West, Seward Meridian, Alaska.

The land consists of level ground among spruce, birch and outcrops. Access to the survey was by track.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

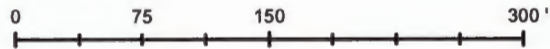
The survey represented by this plat, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director
Douglas M. Hayward 10/23/17
Date
Chief Cadastral Surveyor for Alaska



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

PClements, KPB
Date: 11/19/2019
Imagery: 2016



MP54

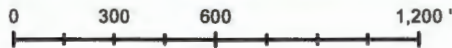
STERLING HWY

RUSSIAN RIVER
CAMPGROUND



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.

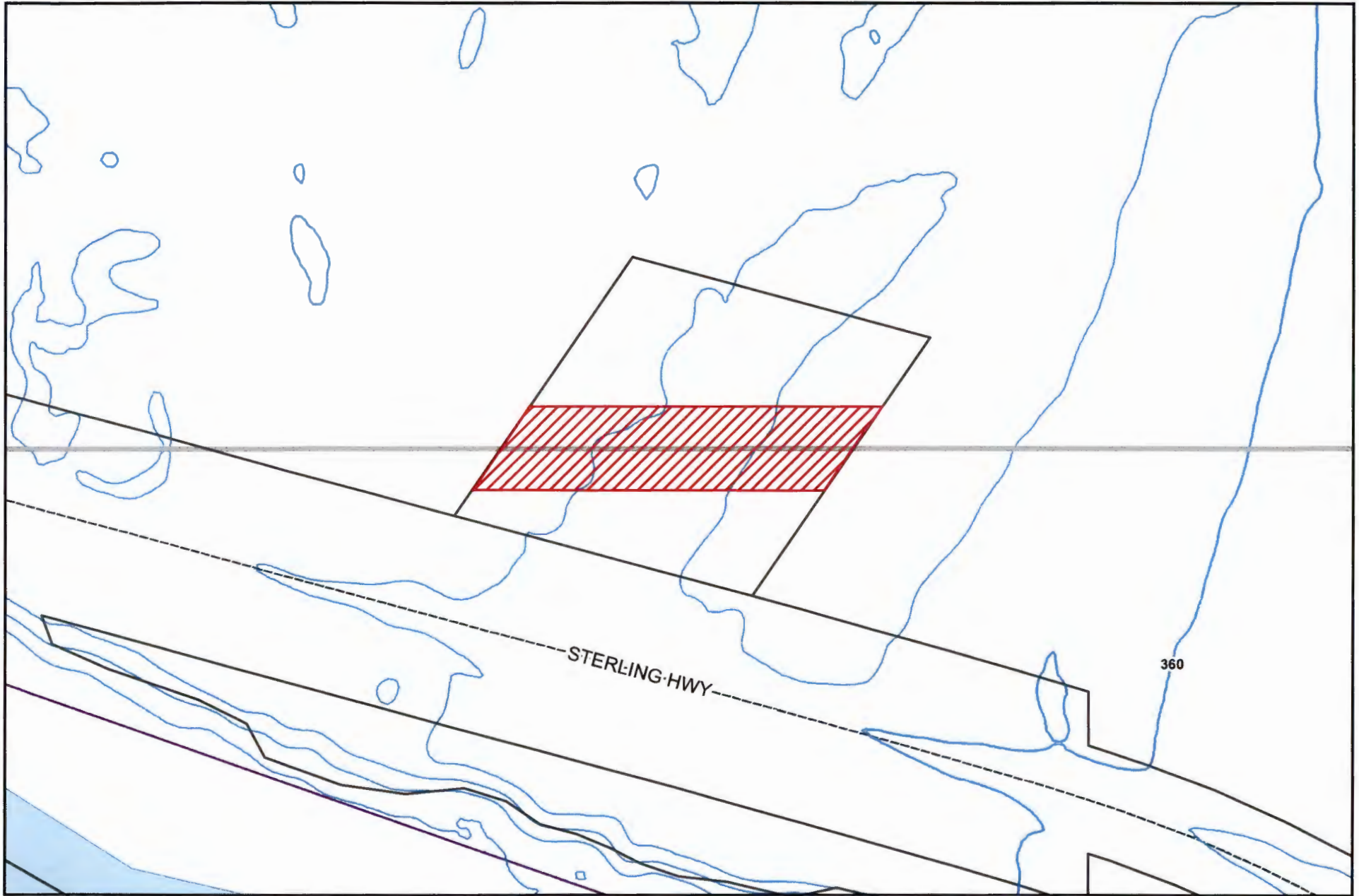
Aerial View



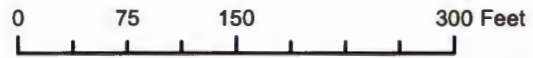
Section Line Easement Vacation

PClements, KPB
Date: 11/19/2019
Imagery: 2016

Four Foot Contours



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.

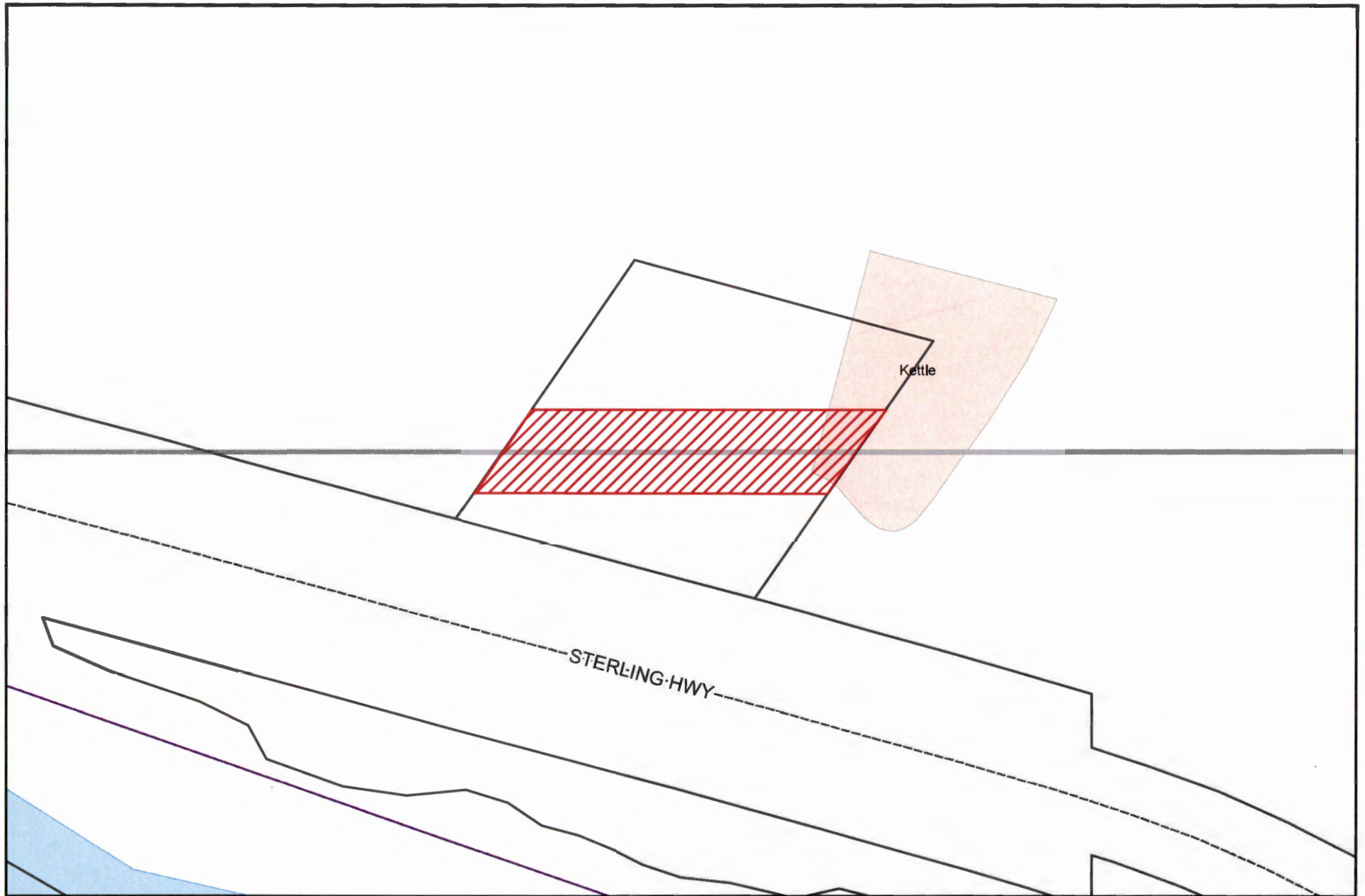


JReif



Date: 11/24/2019

Kenai Watershed Forum Wetlands



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.

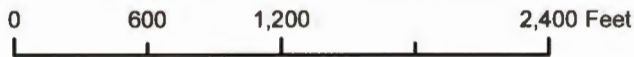
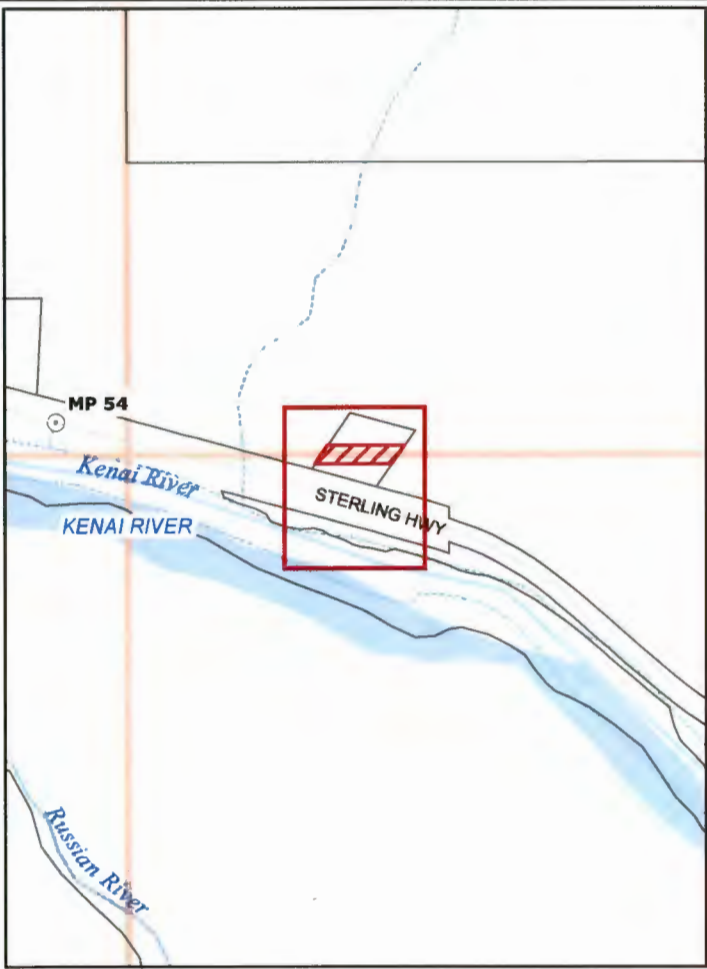
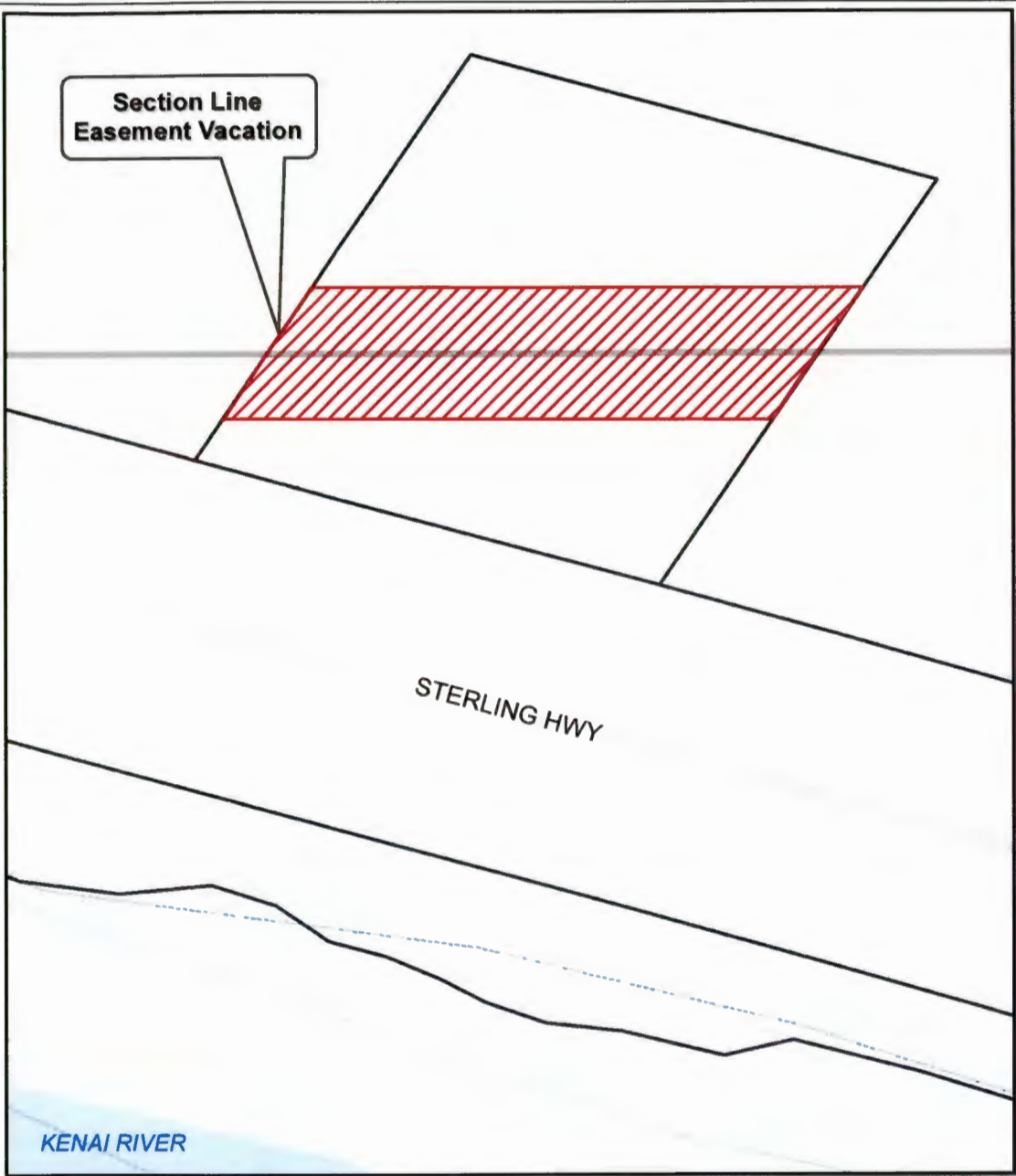
0 75 150 300 Feet

JReif



Date: 11/24/2019

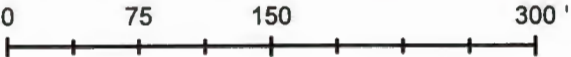
Section Line
Easement Vacation



KPB 2019-138V
T05N R04W S27
T05N R04W S34
Cooper Landing



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.



PClements, KPB
Date: 11/19/2019

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

Preliminary Finding & Decision

Petitioner: Mary Dreifuert

Section Line Easement Vacation

EV-3-302

Petitioned Action:

The proposed action consists of vacating the 50-foot wide section-line easements (SLEs) lying within USS 14477 as depicted in Attachment A. This action lies in sections 27 & 34, Township 5 North, Range 4 West, Seward Meridian.

The reasons cited by the applicant:

- House and other structures are located within the easement.

Legal Authority:

AS 19.10.010, 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-3-302 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:

50-foot wide section-line easement exists within the subject properties pursuant to AS 19.10.010 (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 Sterling Highway Right-of-way (ROW). Public access to the adjoining and adjacent parcels is not negatively affected by this action.

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:

A field inspection was not conducted; therefore, it is unknown whether vehicles, pedestrians or other public interests have been or are currently using those portions of the SLEs proposed to be vacated. However, due to the nature of the section line that these 50' SLEs are attached to (*i.e. being an unconstructed protracted [unsurveyed] section line, located in a remote area, more than two miles from the nearest monumentation that controls the location of this section line*) it is highly unlikely that the general public or any public interests would know the exact location of this 100-foot wide SLE corridor. The subject SLEs are unconstructed.

Practicality of Use:

Section-line easements along protracted section lines are not practical to use for legal public access until the location of the section line has been determined by an official survey. To avoid trespass issues the exact location of the easement must be known on the ground before it can be used. In addition, pursuant to Footnote 15 of the 1969 Opinions of the Attorney General No. 7, "a section line right-of-way [SLE] attaches to the protracted section line subject to subsequent conformation with the official public land survey" (emphasis added). Only then do public access rights pursuant to AS 19.10.010 attach to the section line.

The subject SLE's attached to the protracted section line in accordance with AS 19.10.010 (*see the Discussion Section below*) when U.S. Survey No. 14477 was conveyed directly to the State of Alaska prior to conveyance to the petitioner. USS 14477 is an inholding currently surrounded by the Chugach National Forest. Its southerly boundary is also contiguous with the northerly bounds of the Sterling Highway right-of-way; therefore, the parcel has legal access. Lands in the NW 1/4 of said Section 34 were selected by the State under NFCG 52 but have not received Tentatively Approval yet. The SLEs proposed to be vacated are approximately 100' to 200' north of, are parallel – to some extent – to the Sterling Highway, and they dead-end at the boundaries of USS 14477. SLE's do not exit within the national forest; therefore, this isolated 300 +/- foot segment of SLE appears to serve no practical purpose. Sufficient public access exists – via the highway right-of-way – to provide access to adjacent Chugach National Forest lands.

Agency Review:

Initial Agency review of the proposed action began on December 19, 2018 and concluded July 19, 2019. 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 section-line common to Sections 27 & 34, T5N, R4W, SM was not surveyed by the Rectangular Survey Plat for Partially Surveyed Township 5 North, Range 4 West, Seward Meridian, Alaska accepted by BLM December 24, 1998 and officially filed on January 22, 1999. Said section line remains a protracted (unsurveyed) line.
 - b. AS 19.10.010 **Dedication of land for public highways** states in part “**A tract 100 feet wide between each section of land owned by the state** (emphasis added) or acquired from the state, and a tract four rods wide between all other sections in the state, is dedicated for use as public highways...”
 - c. The lands underlying the SLEs proposed to be vacated were conveyed to the State of Alaska by Patent No. 50-2018-0038 on January 31, 2018.
 - d. **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 51.025, 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 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 Sterling Highway 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. Comply with KPB’s conditions of approval unless waived by the Director, DMLW.
3. Document the existence of an easement along the powerline, or dedicate an easement of sufficient width.

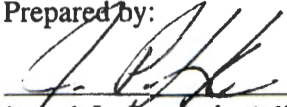
4. A final plat (owner signed / surveyor sealed Mylar) must be submitted to DNR within two years from the date of approval of the Final Decision unless extended by DMLW, Survey Section.

5. 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 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:

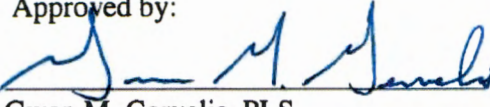


Joseph L. Poydack, Adjudicator

10/8/2019

Date

Approved by:



Gwen M. Gervelis, PLS
Chief, Survey Section

10/8/2019

Date

PUBLIC NOTICE:

**Notice of Preliminary Decision
Section Line Easement Vacation
EV-3-302**

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 vacating the 50-foot wide section-line easements lying within USS 14477 as depicted in Attachment A. This action lies in sections 27 & 34, Township 5 North, Range 4 West, Seward Meridian, Alaska.

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/Login.aspx>. All comments must be received in writing at DMLW by 5:00 p.m. on November 11, 2019. **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-3-302; 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.

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 3-302 Attachment A
Sections 27 & 34, T5N, R4W, SM



50' SLEs Proposed to be Vacated

3. J. Cadieux asked about the rock fall that exists on the Seward Highway and whether the lessons from that are taken in consideration on this project.

a. S. Holland said, yes. There are many controls included since this is new design rather than retrofit like the Seward Highway was. Things like rock catchment are being taken into consideration.

Regular meeting resumed.

8. OLD BUSINESS - none

9. NEW BUSINESS

a. Section line easement vacation

Public notice is hereby given that a petition was received on 11/18/2019 to vacate a Section Line easement in the Cooper Landing area. Location and request: Vacates a 100-foot wide Section Line Easement running East to West located 50-feet in Section 27 Township 05 North Range 04 West and 50-feet within Section 34 Township 05 North Range 04 West within US Survey 14477 as dedicated on Section Line Easement Vacation Plat associated with US Survey No 14477. The right-of-way being vacated is developed and located within the US Survey No 14477 of Section 34, Township 5 North, Range 4 West and Section 27, Township 5 North, Range 4 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-138V Purpose as stated in petition: The justification for vacating the section line easements is that it will not change the existing highway nor will it keep anyone from using the adjoining properties. Because the Sterling Highway has been in place for many years, the section line between sections 27 and 34 Township 5 North Range 4 West, Seward Meridian, in this area will never be needed for a right of way. The existing Sterling Highway is parallel to the southern boundary of this property and when this property was surveyed it was staked with enough room for expansion of the existing highway if it should be needed. Chugach National Forest is on the other three sides of this property so access to any of the land around it is not a problem. And as you can see on the drawing of the USS No 14477, the 100' section line easement covers most of the improvements on this property.

- C. Degernes stated that in this particular case the public does not lose out but, in general, granting vacation requests to section lines requires careful consideration. If impacts are made, the loss of the easement should be compensated to the public. Although it is hard to see reasons why not to grant this particular vacation, there are many times the public may have more interest. It is a fundamental issue of giving up the public's rights. If there was an easement bank that provided equal or better access someplace else it might be easier to agree to some vacations.
- K. Recken asked why vacating the easement is needed.
 - M. Mueller cannot speak to this specifically but offered that in general easements on parcels can mean that it may be hard to get financing or to sell to someone who needs financing etc.
- C. Degernes moves to approve the vacation request with the caveat that in this case the public's loss is minimal but future

vacation requests must each be scrutinized to ensure the public's interest is not outweighed by the applicant's desires for the vacation. Generally, the applicant should be required to provide compensation of equal or greater access than the vacation. H. Harrison seconds, all approve.

- b. Ordinance: Amendment to Title 17 concerning KPB employees participating in borough land sales
 - i. C. Degernes moves to support this ordinance change as proposed. K. Recken seconds. All approve.
- c. Ordinance: Amendment to Title 20 concerning the definition of subdivision
 - i. C. Degernes moves to support this ordinance change as proposed. Y. Galbraith seconds. All approve.

10. PLAT REVIEW – none.

11. INFORMATION and ANNOUNCEMENTS

- a. D. Story encouraged everyone to attend the Walkable and Trails Committees' meeting tomorrow night, December 5th, at 6:00pm.

12. COMMISSIONER'S COMMENTS - none

13. ADJOURNMENT – D. Story moves to adjourn. K. Recken seconds, all approve.

For more information or to submit comments please contact:

David Story, Secretary Treasurer P.O. Box 694, Cooper Landing,
99572 CooperLandingAPC@gmail.com