




KENAI PENINSULA BOROUGH

144 N. BINKLEY SOLDOTNA, ALASKA 99669-7520
BUSINESS (907) 262-4441 FAX (907) 262-1892

JOHN J. WILLIAMS
MAYOR

MEMORANDUM

TO: Ron Long, Assembly President
Kenai Peninsula Borough Assembly Members

FROM:  Max Best, Planning Director

DATE: July 19, 2006

SUBJECT: Vacate a portion of the 66-foot section line easement between Whisper Lake and Lot 22A Lake View Terrace North Shore Addition No. 3 (KN 2003-42) within Sections 17 and 18, Township 5 North, Range 9 West, Seward Meridian, Alaska; and within the Kenai Peninsula Borough. KPB File 2006-160

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 Planning Commission approved the referenced vacation during their regularly scheduled July 17, 2006 meeting.

A motion to grant the vacation as petitioned and adopting the nine findings passed by unanimous consent. This petition is being sent to you for your consideration and action.

The Assembly has 30 days from July 17, 2006 in which to veto the decision of the Planning Commission. If the Commission receives no veto within the 30-day period, the decision of the Commission will stand.

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

4. Vacate a portion of the 66-foot section line easement between Whisper Lake and Lot 22A Lake View Terrace North Shore Addition No. 3 (KN 2003-42; within Sections 17 and 18, Township 5 North, Range 9 West, Seward Meridian, Alaska; and within the Kenai Peninsula Borough. KPB File 2006-160

Staff Report reviewed by Max Best

PC Meeting 7/17/2006

Purpose as stated in petition: We want to build a house on the sandy hill, which is located partially on the section line easement to be vacated. The State of Alaska has already approved the proposal.

Petitioners: Jochen A Hampe and Ina Krause of Spain

Public notice appeared in the June 29 and July 6, 2006 issues of the Peninsula Clarion.

All surrounding property owners were notified by certified mailings as required by the code. Seven (7) certified mailings were sent; all receipts have been returned.

Thirteen (13) regular mailings and nine (9) departmental mailings were sent to agencies, interested parties, and KPB Departments. Three (3) notices were posted in public locations. The notice and maps were posted on the Borough web site.

Statement of objection

No statements of objection were received.

Staff discussion

It is unclear how the easement grant will be provided. If it is provided on the State EV plat, the easement will be accepted under the regulation of the State of Alaska. This is the easement grant preferred by staff.

Findings:

1. The portion of the easement proposed for vacation is not in use for access at this time.
2. Alternate, superior access will be provided with the grant of an easement to the lake closer to the constructed public road and turnaround.
3. Section line easements are under the regulation of the State of Alaska.
4. Section line easement vacations must be approved by the State of Alaska.
5. The State of Alaska has approved this vacation.
6. Section line easement vacations are finalized with a State easement vacation plat.

STAFF RECOMMENDATION: Based on the above findings, staff recommends granting the vacation as approved, subject to:

1. Submittal of State easement vacation plat and/or other State requirement within one year of approval.

If the vacation is approved, the Assembly has thirty days in which they may veto Planning Commission approval of the vacation.

DENIAL OF A VACATION PETITION IS A FINAL ACT FOR WHICH NO FURTHER CONSIDERATION SHALL BE GIVEN BY THE KENAI PENINSULA BOROUGH. APPEALS TO PLANNING COMMISSION DENIAL OF A VACATION MUST BE TAKEN WITHIN THIRTY (30) DAYS TO SUPERIOR COURT AT KENAI, ALASKA PURSUANT TO PART VI OF THE ALASKA RULES OF APPELLATE PROCEDURES. [20.28.110 AS AMENDED BY KENAI PENINSULA BOROUGH ORDINANCE 99-43].

END OF STAFF REPORT

Chairman Bryson opened the meeting for public comment. Seeing and hearing no one wishing to speak, Chairman Bryson closed the public comment and opened the discussion among the Commission.

MOTION: Commissioner Isham moved, seconded by Commissioner Hutchinson to approve the vacation including the 6 findings.

Commissioner Heimbuch asked about a 50-foot setback for Whisper Lake. Mr. Best replied that the Borough does not have jurisdiction over a 50 foot upon the lake. It is providing a usable piece of ground to the applicant in exchange for another piece of ground, which is equal or better access to the lake.

VOTE: The vote passed by unanimous consent.

BRYSON YES	CLARK YES	FOSTER YES	GROSS YES	HEIMBUCH YES	HOHL ABSENT	HUTCHINSON YES
ISHAM YES	JOHNSON ABSENT	MARTIN YES	MASSION ABSENT	PETERSEN YES	TAURIAINEN ABSENT	9 YES 4 ABSENT

AGENDA ITEM F. PUBLIC HEARINGS

5. Rename existing streets in conjunction with the Enhanced 911 Street Naming and Addressing Project within the Kenai Peninsula Borough. Streets under consideration at this meeting are described as follows:

Staff Report given by Maria Sweppy

PC Meeting: 7/17/06

Staff Recommendation: Staff recommended that the renaming of the following streets be handled in one motion per staff recommendations unless there was someone in the public to testify or the Planning Commission would like to handle one individually.

- F.5.d. Robinson Court to Flower Avenue
- F.5.f. Rose Avenue (west of the Sterling Highway) to Rochon Court
- F.5.h. Roy Circle to Torwick Circle
- F.5.i. Royal Court to Savannah Bella Court
- F.5.j. Rushmore Drive (north of Lincoln Avenue) to Constitution Street
- F.5.m. Sandy Lane to Tranquil Avenue
- F.5.n. Short Court to Jane Clara Court
- F.5.o. Skilak Street to Ronda Street
- F.5.p. Tustumena Avenue to Tusty Avenue

END OF STAFF REPORT

Chairman Bryson opened the meeting for public comment. Seeing and hearing no one wishing to speak, Chairman Bryson closed the public comment period and opened discussion among the Commission.

MOTION: Commissioner Clark moved, seconded by Commissioner Isham to approve the name changes for F.5.d.; F.5.f.; F.5.h.; F.5.i.; F.5.j.; F.5.m.; F.5.n.; F.5.o.; F.5.p. as recommended by staff.

VOTE: The vote passed by unanimous consent.

BRYSON YES	CLARK YES	FOSTER YES	GROSS YES	HEIMBUCH YES	HOHL ABSENT	HUTCHINSON YES
ISHAM YES	JOHNSON ABSENT	MARTIN YES	MASSION ABSENT	PETERSEN YES	TAURIAINEN ABSENT	9 YES 4 ABSENT

AGENDA ITEM F. PUBLIC HEARINGS



**Kenai Peninsula Borough
Planning Department
144 North Binkley
Soldotna, Alaska 99669-7599
907-714-2200**

toll free within the Borough 1-800-478-4441, extension 2200

FAX 907-262-8618

email: planning@borough.kenai.ak.us

July 19, 2006

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
NOTICE OF DECISION**

MEETING OF JULY 17, 2006

RE: Vacate a portion of the 66-foot section line easement between Whisper Lake and Lot 22A Lake View Terrace North Shore Addition No. 3 (KN 2003-42; within Sections 17 and 18, Township 5 North, Range 9 West, Seward Meridian, Alaska; and within the Kenai Peninsula Borough. KPB File 2006-160

The Kenai Peninsula Borough Planning Commission approved the proposed vacation during their regularly scheduled meeting of July 17, 2006.

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 in which to veto the Planning Commission decision. If the Planning Director receives no veto within the specified period, the Borough 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) to verify the date the subject vacation will be reviewed by the Assembly.

This notice and unapproved minutes of the subject portion of the meeting were sent July 19, 2006 to:

Jochen Hampe
Apartado 248
Campos, 07630 Spain

Ina Krause
Apartado 248
Campos, 07630 Spain

AGENDA ITEM F. PUBLIC HEARINGS

4. Vacate a portion of the 66-foot section line easement between Whisper Lake and Lot 22A Lake View Terrace North Shore Addition No. 3 (KN 2003-42; within Sections 17 and 18, Township 5 North, Range 9 West, Seward Meridian, Alaska; and within the Kenai Peninsula Borough. KPB File 2006-160

STAFF REPORT

PC Meeting 7/17/2006

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Petitioners: Jochen A Hampe and Ina Krause of Spain

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All surrounding property owners were notified by certified mailings as required by the code. Seven (7) certified mailings were sent; all receipts have been returned.

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Statement of objection

No statements of objection were received.

Staff discussion

It is unclear how the easement grant will be provided. If it is provided on the State EV plat, the easement will be accepted under the regulation of the State of Alaska. This is the easement grant preferred by staff.

Findings:

1. The portion of the easement proposed for vacation is not in use for access at this time.
2. Alternate, superior access will be provided with the grant of an easement to the lake closer to the constructed public road and turnaround.
3. Section line easements are under the regulation of the State of Alaska.
4. Section line easement vacations must be approved by the State of Alaska.
5. The State of Alaska has approved this vacation.
6. Section line easement vacations are finalized with a State easement vacation plat.

STAFF RECOMMENDATION: Based on the above findings, staff recommends granting the vacation as approved, subject to:

1. Submittal of State easement vacation plat and/or other State requirement within one year of approval.

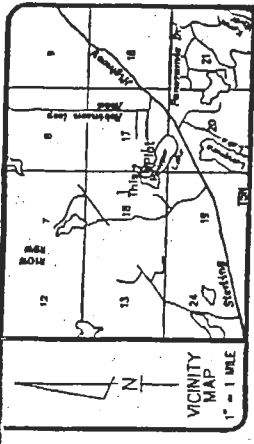
If the vacation is approved, the Assembly has thirty days in which they may veto Planning Commission approval of the vacation.

DENIAL OF A VACATION PETITION IS A FINAL ACT FOR WHICH NO FURTHER CONSIDERATION SHALL BE GIVEN BY THE KENAI PENINSULA BOROUGH. APPEALS TO PLANNING COMMISSION DENIAL OF A VACATION MUST BE TAKEN WITHIN THIRTY (30) DAYS TO SUPERIOR COURT AT KENAI, ALASKA PURSUANT TO PART VI OF THE ALASKA RULES OF APPELLATE PROCEDURES. [20.28.110 AS AMENDED BY KENAI PENINSULA BOROUGH ORDINANCE 99-43].

END OF STAFF REPORT

Line	Bearing	Length
L1	N72°13'06"E	34.90'
L2	N00°31'02"E	48.76'
L3	N44°35'06"W	44.24'

- NOTES:**
- Proposed land uses are recreational, residential, agricultural, and commercial.
 - Building setback - 4' setback of 20 feet is required from all street corners. The setback shall be approved by resolution of the appropriate Planning Commission.
 - Front 10 ft. of the building setback adjacent to rights-of-way is designated as a utility easement. All structures shall be constructed or placed within a utility easement which would interfere with the ability of a utility to use the easement.
 - WASTEWATER DISPOSAL:** The parent subdivision for the lot 22A requiring from this platting action was approved by the Kenai Peninsula Borough on 12/20/00. Plans for wastewater disposal system are on file at the Borough. Wastewater disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation.
 - WASTEWATER DISPOSAL:** No wastewater will be generated or disposed on Lot 22A. Conditions might not be suitable for onsite wastewater treatment. Conditions must meet the wastewater disposal requirements of the KPB Chapter 20.14 and regulatory requirements of the Alaska Department of Environmental Conservation.
 - The natural meanders of the line of Mean High Water or Ordinary High Water for Mean High Water or Ordinary High Water shall be shown for computation only. The TRUE property corners being on the extension of the side lot lines and their intersection with the natural meanders.
 - This subdivision is subject to restrictive covenants recorded in Book 480, Page 242 Kenai Recording District.



CERTIFICATE OF OWNERSHIP and DEDICATION

WE HEREBY CERTIFY THAT WE ARE THE OWNERS(S) OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND THAT WE HEREBY ANNOUCE THE SUBDIVISION AND BY OUR FREE CONSENT DEDICATE ALL RIGHTS OF WAY AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

Stephen A. Thompson
 Stephen A. Thompson
 141276 Railroad
 Kenai, Alaska
 (Lot 22 Block 6)

Paul J. Murray
 Paul J. Murray, Managing Partner for Lake View Terrace Partnership
 1543 C Street
 Anchorage, Alaska 99501
 (Government Lot 5)

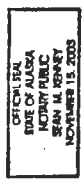
NOTARY'S ACKNOWLEDGMENT

SUBSCRIBED AND SWORN BEFORE ME THIS 13 DAY OF September, 2003 FOR Stephen A. Thompson and Paul J. Murray



NOTARY'S ACKNOWLEDGMENT

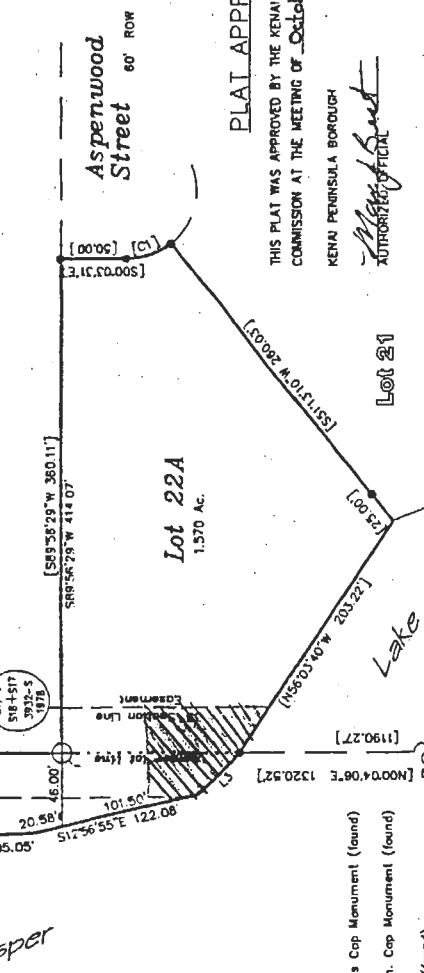
SUBSCRIBED AND SWORN BEFORE ME THIS 14 DAY OF February, 2003 FOR Paul J. Murray



Lake View Terrace North Shore Addition #3
 A record of Lot 22 Lake View Terrace - North Shore Addition Phase Two, plot No. 2000-33 KR0, recorded in Book 17, Sec 18, 194, R9W, S4M, Kenai Recording District, Kenai Peninsula Borough, Alaska.
 Containing 2.506 Acres

Integrity Surveys	
Kenai, Alaska 99611-8303	
SURVEYORS	(907) 384-9977
FAX	(907) 384-9977
PLANNERS	
208 NO.	2208
SURVEYED:	12 September, 2002
SCALE:	1" = 80'
FIELD DC:	2002-4, Pg. 1056

Curve	Data	Radius	Length	Chord	Chord Bearing
C1	30°39'08"	50.00'	33.73'	33.09'	S18°23'04"E
C2	184°34'37"	50.00'	169.81'	99.18'	S00°04'44"E



SURVEYOR'S CERTIFICATE

I hereby certify that I am properly registered and licensed to practice land surveying in the State of Alaska. This plat represents a survey made by me or under my direct supervision. The monuments shown hereon actually exist as described, and all dimensions and other details are correct to the normal standards of practice of land surveyors in the State of Alaska.
 Date 26 Feb 2003

LEGEND:

- 2-1/2" Brass Cap Monument (found)
- 3-1/4" Alum. Cap Monument (found)
- 5/8" Rebar (found)
- Witness Corner (found)
- 5/8" Rebar (set this survey)
- Record Datum - Lake View Terrace North Shore Addition - Phase 2 Plot # 2000-33 KR0
- Record Datum - Homewood Subdivision Plot # 77-81 KR0

RECORDED 20-
 KENAI REC. DIST.
 DATE: 6-25-2003
 TIME: 9:23 AM
 REQUESTED BY:
 INTEGRITY SURVEYS
 605 SWIRES DRIVE
 KENAI, ALASKA 99611

2006-160

EV-2-901 Attachment A

SECTIONS 17 & 18
T. 5 N., R. 9 W., S.M.



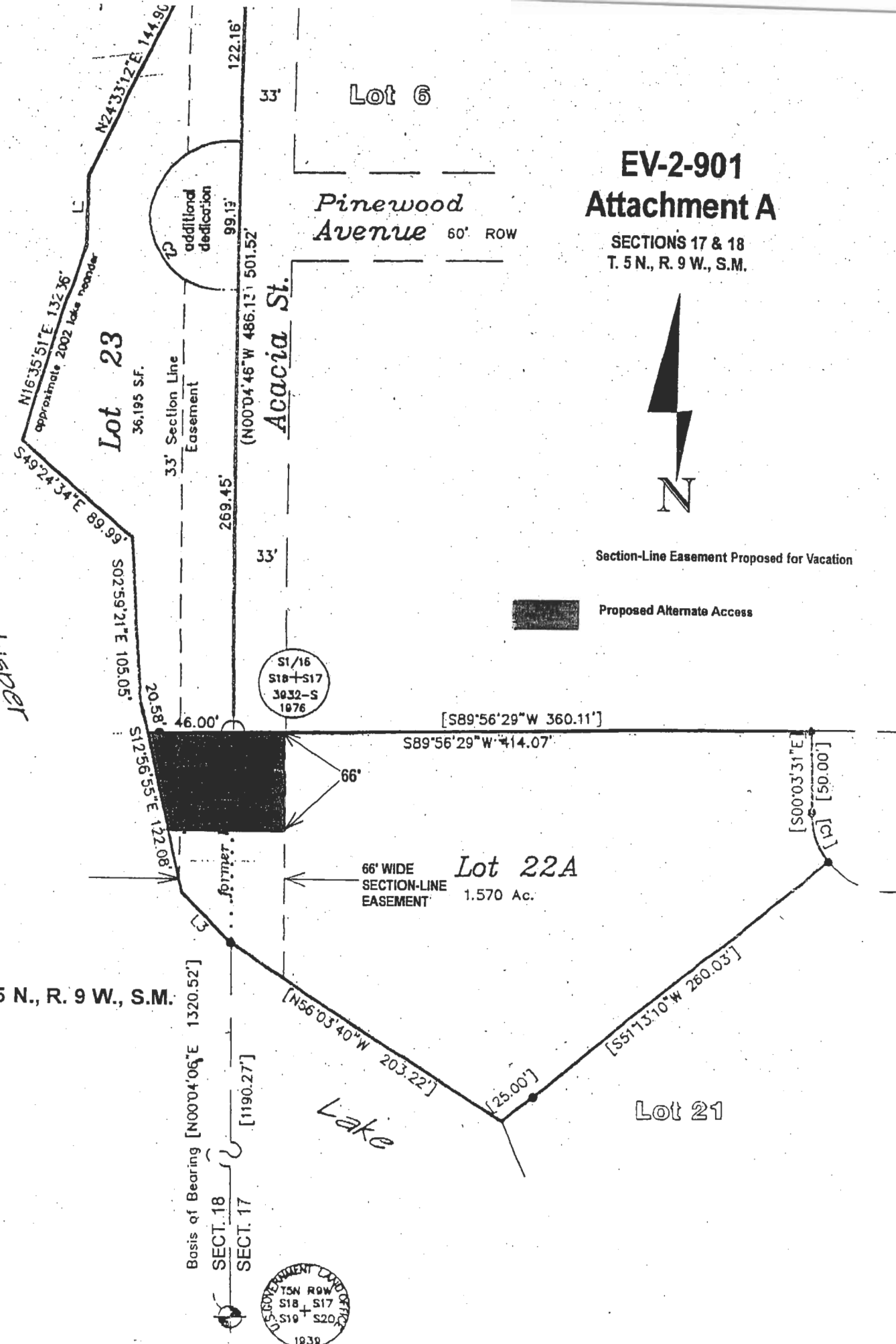
Section-Line Easement Proposed for Vacation



Proposed Alternate Access

Whisper

T. 5 N., R. 9 W., S.M.



S1/16
S18 + S17
3032-S
1976

U.S. GOVERNMENT LAND OFFICE
T5N R9W
S18 S17
S19 + S20
1939



SIRCH RIDGE ST

ASPEN

section line

remaining section line esmt (green)

section line esmt to be vacated (solid red)

alternative access (yellow)

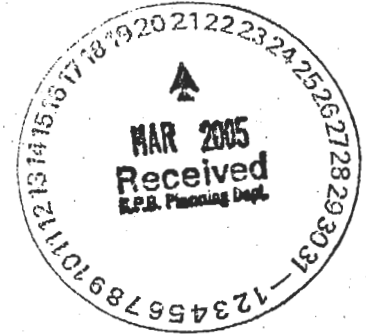
ACACIA

EAGLE'S WING CIR

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

FINAL FINDING AND DECISION

Petitioners: Jochen Hampe and Ina Krause
Section-Line Easement Vacation
EV-2-901



This Final Finding and Decision complements the Preliminary Finding and Decision for EV-2-901 issued on November 26, 2004. No updates or changes to the approved Preliminary Finding and Decision have been made.

PROPOSED ACTION:

The proposed action consists of vacating a portion of the north-south 66-foot wide section-line easement between the ordinary high-water line of Whisper Lake and a point on the section line lying 66-feet south of the north boundary of Lot 22A, Lake View Terrace-North Shore Addition #3, Plat No. 2003-42 as depicted on Attachment A. The proposed action lies within Sections 17 & 18, Township 5 North, Range 9 West, Seward Meridian.

Vacation of this section-line easement will unencumber an areal where the petitioners wish to build a house.

AUTHORITY:

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

The Alaska Department of Transportation and Public Facilities (DOT/PF) and the Alaska Department of Natural Resources (DNR) have concurrent authority for approving the vacation of section-line easements.

PUBLIC NOTICE AND COMMENT

Public Notice, pursuant to AS 38.05.945, was advertised in the Anchorage Daily News on December 3 and December 10, 2004. The notice was also posted from December 3, 2004 through January 3, 2005 on the State of Alaska Online Public Notice website. No objections or adverse comments were received from the public.

AGENCY REVIEW AND COMMENT:

Agency review of the proposed action was conducted twice prior to issuance of the Preliminary Finding and Decision in order to resolve agency objections. The third and final agency review period, conducted concurrently with public notice, began on December 3, 2004 and concluded on January 3, 2005. Agencies notified during the agency review period included DOT/PF, Department of Fish and Game, DNR Division of Mining, Land and Water—Southcentral Region Office, DNR Division of Parks and Outdoor Recreation, and the Trust Land Office. No objections or adverse comments were received during the final agency review period.

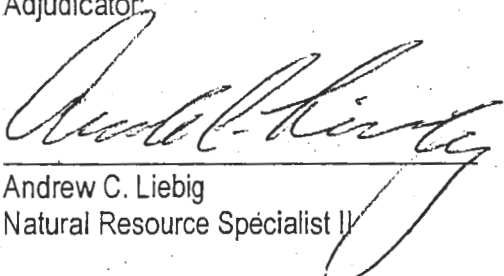
FINDING:

1. The proposed alternate access meets the requirements for vacation of a portion of the subject section-line easements pursuant to AS 19.30.410 and 11 AAC 51.065.
2. No overriding public values have been identified that would require retention of the subject section-line easements proposed for vacation.

Recommendation for approval of the proposed section-line easement vacation is subject to the following conditions:

1. The applicant is required to submit a petition to vacate the section-line easement with the Kenai Peninsula Borough, and comply with the borough's conditions of approval.
2. Dedication of a 66-foot wide public access easement beginning at the eastern boundary of the existing section-line easement within Section 17, proceeding westerly and coincident with the north boundary of Lot 22A, Lake View Terrace North Shore Addition No. 3 (Plat No. 2003-42) to the ordinary high-water line of Whisper Lake, as shown on Attachment A.
3. A final plat must be submitted within two years from the date of approval of the Final Finding and Decision.

Adjudicator:

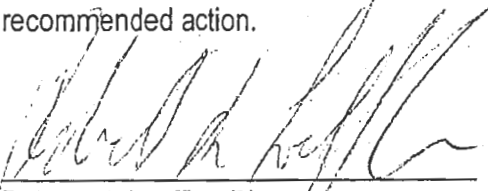


Andrew C. Liebig
Natural Resource Specialist II

3-7-05
Date

FINAL FINDING AND DECISION:

The finding presented above has been reviewed and considered. The requirements of all applicable statutes and regulations have been satisfied. It is the finding of the Director, Division of Mining, Land and Water, that it is in the best interest of the State of Alaska and the public, and that I hereby approve the recommended action.



Robert M. Loeffler, Director
Division of Mining, Land and Water

3/10/05
Date

APPEAL PROVISION:

A person affected by this decision who provided timely written comment or public hearing testimony on this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of issuance of this decision, as defined in 11 AAC 02.040(c) and (d) and may be mailed or delivered to Tom Irwin, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to dnr_appeals@dnr.state.ak.us. If no appeal is filed by that date, this decision goes into effect as a final order and decision 31 days after issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

EV-2-901 Attachment A

SECTIONS 17 & 18
T. 5 N., R. 9 W., S.M.

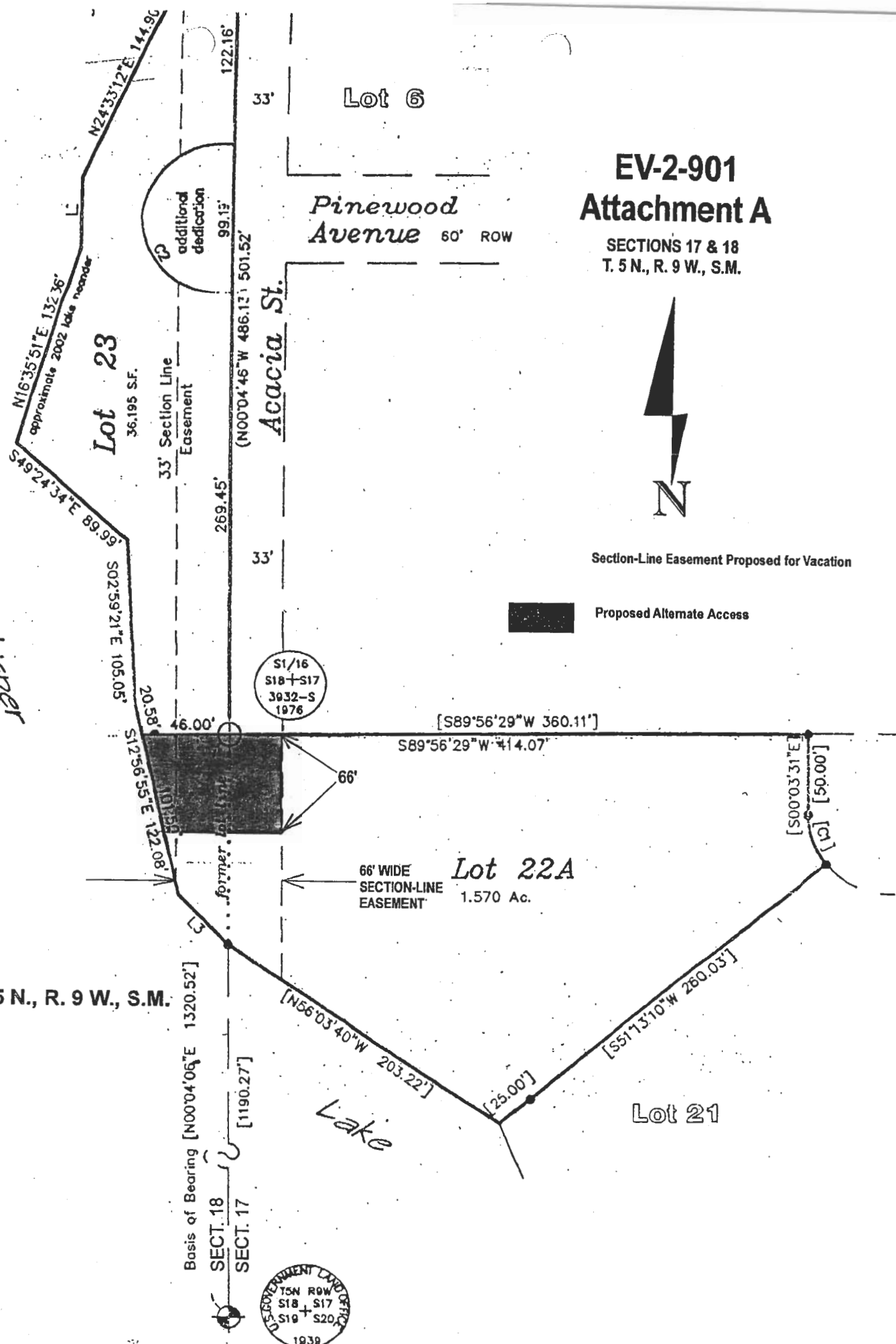


Section-Line Easement Proposed for Vacation

Proposed Alternate Access

whisper

T. 5 N., R. 9 W., S.M.



STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING, LAND & WATER

FRANK H. MURKOWSKI, GOVERNOR

550 WEST 7TH AVENUE, SUITE 650
ANCHORAGE, ALASKA 99501-3576

PHONE: (907) 269-8523

FAX: (907) 269-8914

December 3, 2004

Kenai Peninsula Borough
Attn: Mary Toll, Platting Officer
144 N. Binkley
Soldotna AK 99669

DEC -7 2004

Subject: EV-2-901, Preliminary Finding and Decision
Section-Line Easement Vacation

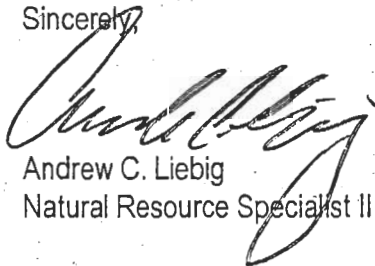
Dear Ms. Toll:

The Division of Mining, Land and Water has made a Preliminary Finding and Decision to vacate a portion of the north-south 66-foot wide section-line easement between the ordinary high-water line of Whisper Lake and a point on the section line lying 66-feet south of the north boundary of Lot 22A, Lake View Terrace North Shore Addition #3, Plat No. 2003-42. The proposed action lies within Sections 17 & 18, Township 5 North, Range 9 West, Seward Meridian.

Enclosed with this letter is a copy of the Preliminary Finding and Decision. Comments on the proposed action must be received in writing by 5 PM on Monday, January 3, 2005.

If you have any questions, please feel free to contact me at 907-269-8535 or andrew_liebig@dnr.state.ak.us.

Sincerely,



Andrew C. Liebig
Natural Resource Specialist II

Enclosure

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans"

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

PRELIMINARY FINDING AND DECISION

Petitioners: Jochen Hampe and Ina Krause
Section-Line Easement Vacation
EV-2-901

PROPOSED ACTION:

The proposed action is to vacate a portion of the north-south 66-foot wide section-line easement between the ordinary high-water line of Whisper Lake and a point on the section line lying 66-feet south of the north boundary of Lot 22A, Lake View Terrace North Shore Addition #3, Plat No. 2003-42 as depicted on Attachment A. The proposed action lies within Sections 17 & 18, Township 5 North, Range 9 West, Seward Meridian.

Vacation of this section-line easement will unencumber an area with a hill where the petitioners wish to build a house.

AUTHORITY:

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

The Alaska Department of Transportation and Public Facilities (DOT/PF) and the Alaska Department of Natural Resources (DNR) have concurrent authority for approving the vacation of section-line easements.

ADMINISTRATIVE RECORD:

Department of Natural Resources Survey Case File EV-2-901 constitutes the administrative record used for the basis of this decision.

BOROUGH:

This action is located within the Kenai Peninsula Borough.

STATE EASEMENT INTEREST:

A 33-foot wide section-line easement exists on each side of the section line common to sections 17 & 18, Township 5 North, Range 9 West, Seward Meridian, pursuant to 43 USC 932, and Territorial Legislation Chapter 19, SLA 1923. (See Discussion and Findings No. 1, Page 3).

UNDERLYING INTEREST:

Jochen Hampe and Ina Krause own the estate underlying the section-line easement proposed for vacation.

ALTERNATE ROUTE:

The proposed alternate access to Whisper Lake is a 66-foot wide portion of Lot 22A coincident with the north boundary of the lot, beginning at the east boundary of the section-line easement in Section 17 and proceeding west to the ordinary high water line of Whisper Lake, as shown in Attachment A. As a condition of final approval this alternate route will be required to be dedicated on the Section-Line Easement Vacation Plat as a 66-foot wide public access easement.

LAND MANAGEMENT POLICIES:

Pursuant to AS 19.30.410 and 11 AAC 51.065, before any vacation, modification, or relocation of a public right-of-way, the applicants must demonstrate to the satisfaction of the department that equal or better access is available.

PUBLIC USE PATTERNS:

There is no known information that vehicles or pedestrians have previously used or are using the subject section-line easement.

PRACTICALITY OF USE:

The portion of the 66-foot wide section-line easement proposed for vacation crosses an undeveloped wooded area, which is currently not used for lake access. The alternate route proposed to be dedicated provides a shorter and more direct access to Whisper Lake.

AGENCY REVIEW:

Agency review of the proposed action began on December 22, 2003 and concluded on February 11, 2004. Due to various agency objections, it was necessary to revise the proposed alternate access. After a more reasonable means of alternate access was proposed, a second agency review was conducted and began on August 10, 2004 and concluded on September 11, 2004. Agencies notified during both agency reviews were DOT/PF, Department of Fish and Game (DFG), DNR Division of Mining, Land and Water—Southcentral Region Office (SCRO), and DNR Division of Parks and Outdoor Recreation (DPOR). The Alaska Mental Health Trust Land Office (MHTLO) was requested to comment during the second agency review.

AGENCY COMMENTS NO. 1:

1. In an e-mail dated February 3, 2004 SCRO stated they did not object to the proposed action.
2. In a telephone conversation on February 6, 2004 DPOR stated they did not object to the proposed action.
3. In a letter dated December 31, 2003 DOT/PF stated the following, "we object to the proposed section line easement vacation unless the petitioner can provide an equivalent public access to the lake that the present section line easement provides. Presently the full 66' easement provides valuable public access point to Whisper Lake. The future use of the easement for public access would be diminished by vacation of this easement and its value is not compensated by the proposed alternative access that is apparent wetlands. Therefore, we feel that the vacation petition does not comply with Chapter 26 SLA 98, AS 19.30.410."
4. In a memorandum dated February 11, 2004 DFG stated the following, "based on the information provided, it appears that the alternate access provided may not be equitable. In addition, although the subdivision map indicate that there are several points along the lakeshore where the public can access Whisper Lake; when comparing this map to the aerial photograph, many of the potential sites appear already encumbered by homes or other developments. In addition, while this lake is not known to support anadromous fish stocks, it probably provides other types of recreational opportunities to the public. For this reason, we would recommend a more thorough evaluation of the proposed alternative to provide equal or better access before approving the vacation request."

AGENCY COMMENTS NO. 2:

1. In a letter dated September 1, 2004 DOT/PF stated the following, "as stated in our letter of December 31, 2003, the Department objected to the vacation of the section line easement unless the petitioner could provide equivalent public access to Whisper Lake. The revised proposal meets the Department's conditions provided that the petitioners dedicate a 66-foot wide public access easement from the east boundary of the existing section line easement located within Section 17, Township 5 North, Range 9 West, Seward Meridian, west to the shoreline of Whisper Lake. This dedicated area will include a 66 foot by 66 foot portion of the existing section line easement within the subject property."
2. In an e-mail dated August 30, 2004 SCRO stated they have no objections to the proposed action.
3. In an e-mail dated September 13, 2004 DFG stated that their previous comments had been addressed and therefore had no further comments.
4. In an e-mail dated September 13, 2004 MHTLO stated they had no comments on the proposed action.
5. No objection or adverse comments were received from DPOR.

DISCUSSION AND FINDINGS:

Determination of the existence of the section-line easement:

1. The GLO survey plat for Township 5 North, Range 9 West, Seward Meridian was approved on May 6, 1941. The subject land was conveyed by BLM to private ownership on June 27, 1949 as Homestead Lands. The date of entry was on January 2, 1948.

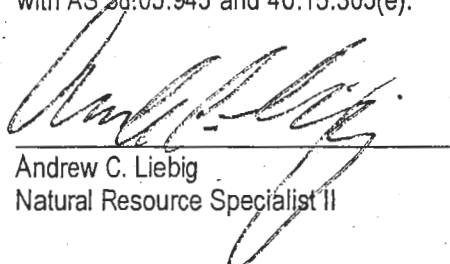
Surveyed federal lands that were unreserved at any time between April 6, 1923 to January 17, 1949 are subject to a 66-foot wide section-line easement pursuant to 43 U.S.C. 932, and Chapter 19, SLA 1923.

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

1. The applicant is required to submit a petition to vacate the section-line easement with the Kenai Peninsula Borough, and comply with the borough's conditions of approval.
2. Dedication of a 66-foot wide public access easement beginning at the eastern boundary of the existing section-line easement within Section 17, proceeding westerly and coincident with the north boundary of Lot 22A, Lake View Terrace North Shore Addition No. 3 to the ordinary high-water line of Whisper Lake, as shown on Attachment A.
3. Pursuant to AS 38.05.945, a public notice of the proposed action must be completed. The Department of Natural Resources may modify the decision based upon public comments. The advertising cost for public notice will be at the expense of the applicant.
4. A final plat must be submitted within two years from the date of approval of the Final Finding and Decision.

RECOMMENDATION:

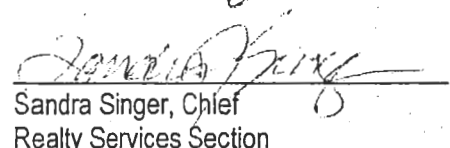
Based on our findings, the applicant meets DNR's requirements to vacate the subject section-line easement. The proposed easement vacation may be in the state's best interest. Changes to the use of public access and the public interest as a result of the activity are acceptable. Therefore, the Division of Mining, Land and Water, Realty Services Section recommends approval of these actions and may proceed with adjudication and public notice in accordance with AS 38.05.945 and 40.15.305(e).



Andrew C. Liebig
Natural Resource Specialist II

11-24-04

Date



Sandra Singer, Chief
Realty Services Section

11/26/04

Date

PUBLIC COMMENT:

In accordance with AS 19.30.410 the Department of Natural Resources, Division of Mining, Land and Water, Realty Services Section has made a Preliminary Finding and Decision to approve the vacation of a portion of the north-south 66-foot wide section-line easement between the ordinary high-water line of Whisper Lake and a point on the section line lying 66-feet south of the north boundary of Lot 22A, Lake View Terrace North Shore Addition #3, within Sections 17 & 18, Township 5 North, Range 9 West, Seward Meridian.

The public is invited to comment on the Preliminary Finding and Decision. Copies of the Preliminary Finding and Decision are available from the Division of Mining, Land and Water, 550 West 7th Avenue, Suite 650, Anchorage AK, 99501-3576. Any comments, objections or expressions of interest must be received in writing at the above address no later than 5:00 PM on January 3, 2005. To be eligible to appeal, a person must respond in writing during the comment period. If public comment in response to this notice indicates the need for significant changes to the Preliminary Finding and Decision, additional public notice will be given on or about January 17, 2005. If no significant change is required, the Preliminary Finding and Decision, including any minor changes, will be issued as a Final Finding and Decision. Please reference the case file number EV-2-901 in your correspondence. Also include your mailing address and telephone number to ensure you receive a copy of the Final Finding and Decision. If you have any questions, please contact Andrew Liebig at 269-8535.

Individuals with audio impairments who wish to respond to this decision by telephone may call the DNR Public Information Center in Anchorage between the hours of 10:00 AM and 5:00 PM, Monday through Friday, at TDD #2698411.

PETITION TO VACATE
PUBLIC RIGHT-OF-WAY/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.

- Fees - \$300 non-refundable fee to help defray costs of advertising public hearing. Plat fees will be in addition to vacation fees.
City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
Name of public right-of-way proposed to be vacated is ...; dedicated by plat of ... Subdivision, filed as Plat No. ... in ... Recording District.
Are there associated utility easements to be vacated? [] Yes [X] No
Are easements in use by any utility company; if so which?
Easement for public road or right-of-way as set out in (specify type of document) ... as recorded in Book ... Page ... of the ... Recording District.
Section Line Easement. Width of easement must be shown on sketch.
Submit three copies of plat or map showing area proposed to be vacated. Must not exceed 11 x 17 inches in size.

- Has right-of-way been fully or partially constructed? [] Yes [X] No
Is right-of-way used by vehicles/pedestrians/other? [] Yes [X] No
Has section line easement been constructed? [] Yes [X] No
Is section line easement being used? [] Yes [X] No
Is alternative right-of-way being provided? [X] Yes [] No



The petitioner must provide reasonable justification for the vacation.

Reason for vacating WE WANT TO BUILD A HOUSE ON THE SANDY HILL, WHICH IS LOCATED PARTIALLY ON THE SECTION LINE EASEMENT TO BE VACATED. THE STATE OF ALASKA HAS ALREADY APPROVED THIS PROPOSAL

The petition must be signed (written signature) by owners of majority of the front feet of land fronting part of right-of-way or section line easement proposed to be vacated. Each must include mailing address and legal description of his/her property.

Submitted by: Signature [Signature]
Name JOHLEN KAMPF as [] representative [X] petitioner
Address APARTADO 248
07630 CAMPOS, SPAIN
Phone +34-600-719917

Petitioners:

Signature [Signature] Name IVA KRAUSE Address APARTADO 248 07630 CAMPOS, SPAIN Owner of 50% OF LOT 22A
Signature [Signature] Name IVA KRAUSE Address APARTADO 248 07630 CAMPOS, SPAIN Owner of 50% OF LOT 22A