

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

**PRELIMINARY FINDING AND DECISION**

**Petitioners: Rudi & Natasha von Imhof, The Leonard Hyde Anchorage Residence Trust**  
Section-Line Easement Vacation  
EV-2-861

**PROPOSED ACTION:**

The proposed action consists of vacating the 66-foot section-line easement (33-feet each side of the section line) within Tracts A1 & B1, Resolution Pointe Subdivision-Addition #1 (Plat No. 2002-146) and the 33-foot section-line easement within Lot 1, Block 1, Resolution Pointe (Plat No. 82-302). The proposed action is located in Sections 14 & 15, T. 12 N., R.4 W., S.M. Vacation of this section-line easement will allow the petitioners to utilize a preferred building site on the property. Please see Attachment A.

**AUTHORITY:**

AS 19.30.410, AS 38.05.035(e), AS 38.05.945, 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-2-861 constitutes the administrative record used for the basis of this decision.

**BOROUGH:**

This action is located within the Municipality of Anchorage.

**STATE EASEMENT INTEREST:**

A 66-foot section-line easement (33-feet each side of the section line) exists within Tracts A1 & B1, Resolution Pointe Subdivision-Addition #1 (Plat No. 2002-146) and the 33-foot section-line easement within Lot 1, Block 1, Resolution Pointe (Plat No. 82-302) pursuant to 43 U.S.C. 932 and Ch. 19 SLA 1923 (see Finding No. 1, page 2).

**UNDERLYING INTEREST:**

The petitioners, Rudi & Natasha von Imhof, and The Leonard Hyde Anchorage Residence Trust own the estate underlying the section-line easements proposed for vacation.

**ALTERNATE ROUTE:**

A 25-foot wide public pedestrian access easement within Tract B1 is proposed to be dedicated to provide access from West 100<sup>th</sup> Avenue to the existing 66-foot wide section line easement in the adjacent Lot 37, Campbell Lake Heights Subdivision. The proposed alternative 25-foot wide easement is more particularly described as "Beginning at the northerly limits of the West 100<sup>th</sup> Avenue right-of-way and proceeding northwesterly along the east boundary of Tract B1, Resolution Pointe Subdivision-Addition # 1, to its intersection with a 12 ½ foot perpendicular offset distance west from the section line as shown on Attachment A.

**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 access reasonably comparable for foreseeable uses is available.

**PUBLIC USE PATTERNS:**

A field inspection of the proposed section-line easement vacation did not reveal any evidence indicating current or historical public use of the easement.

**PRACTICALITY OF USE:**

The 66-foot wide section-line easement proposed for vacation is currently undeveloped.

**AGENCY REVIEW:**

Agency review of the proposed action began on December 14, 2004 and concluded on January 7, 2005. Agencies notified included DOT/PF, Department of Fish and Game (ADF&G), DNR Division of Mining, Land and Water—Southcentral Region Office (SCRO), DNR Division of Parks and Outdoor Recreation (DPOR), and Alaska Mental Health Trust Land Office (TLO).

**AGENCY COMMENTS:**

1. In an e-mail dated December 14, 2004 TLO stated they have no comments on the proposed action.
2. In a letter dated January 10, 2005 DOT/PF stated they “object to the vacation of this section line easement without equivalent alternate public access being provided.” In a letter dated February 15, 2005 DOT/PF state “the Department withdraws its objection to the vacation of this easement.”
3. In a letter dated February 25, 2005 ADF&G stated “we would be opposed to the vacation of this section line easement without verification of legal alternate public access in the same vicinity.” In a meeting held December 16, 2005 at the offices of Dowl Engineers ADF&G retracted their objection to the vacation of this easement provided; 1) Dedication of a 25-foot wide pedestrian easement within and along the east boundary of Tract B1, Resolution Pointe Subdivision-Addition # 1 to provide public access from West 100<sup>th</sup> Avenue to a point 12½ feet west of the section line; 2) All man made obstructions and signs must be removed from the alternate access to provide unobstructed access through the easement, 3) ADF&G are allowed continued access to the lake.
4. In an e-mail dated March 3, 2005 SCRO stated “if the proposal meets the statutory requirements then they have no objections.” In an additional meeting held December 15, 2005 with Public Access Assertion and Defense, SCRO stated they had no objections to the current proposal for vacation and alternate access.
5. No other comments or adverse objections were received.

**DISCUSSION AND FINDINGS:**

**Determination of the existence of the section-line easement:**

1. The GLO survey plat for Township 12 North, Range 4 West, Seward Meridian was approved on September 12, 1917 and accepted on November 14, 1918. The land underlying the subject section-line easement within Section 14 was conveyed by BLM Patent No. 1127257 into private ownership as Homestead Entry Lands. The date of entry (application filed) according to the abstract for BLM Case Serial No. AKA 012107 was March 29, 1948. The land underlying the subject section-line easement within Section 15 was conveyed by BLM Patent No. 1134080 into private ownership as Homestead Entry Lands. The date of entry (application filed) according to the abstract for BLM Case Serial No. AKA 012876 was January 21, 1949. Surveyed federal lands that were unreserved from April 6, 1923 through January 17, 1949 are subject to a 33-foot wide section-line easement pursuant to 43 U.S.C. 932 and Chapter 19, SLA 1923.
2. A portion of the 25 foot-wide pedestrian easement proposed to be dedicated as part of the alternate route overlaps a portion of the section-line easement proposed for vacation. There is no benefit to the landowner by vacating a section-line easement from lands that will be encumbered by a public access easement or right-of-way. Therefore DNR will retain the portion of the section-line easement underlying the proposed 25-foot wide public pedestrian easement.
3. Based on field inspection and agency comment, the proposed alternated access is sufficient to satisfy all present and reasonable foreseeable uses. There is no known current or historical use of this easement to justify the need for a 66’ section-line easement accessing Campbell Lake. A 25’ easement is sufficient for pedestrian access. The proposed alternative access will utilize a more topographically feasible route.
4. Reducing the scope of this easement to a 25’ pedestrian easement will maintain the public’s ability to access the lake and reduces the potential conflict with the seaplane base.

5. The petitioner wishes to emphasize the fact that, although the state asserts that the waters of Campbell Lake are public water, the FAA recognizes the lake as a private use seaplane base. The petitioner further states since the general public will likely be unaware of the required operations and procedures necessary during aircraft operation, providing public access to an active seaplane base will create an unsafe situation for both the public and for the aviators.

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

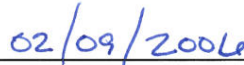
1. The applicant must comply with Municipality of Anchorage conditions of approval.
2. Pursuant to AS 38.05.945, public notice of the proposed action must be completed. The Department of Natural Resources may modify the decision based upon public comments. The advertising cost for public notice will be at the expense of the applicant.
3. Dedication of the 25-foot wide public pedestrian easement noted above in the Alternate Route section of this preliminary finding and as shown on Attachment A.
4. The Petitioner removes the fence and other man made obstructions that deny access to the proposed pedestrian easement. The petitioner also removes any sign that would deter use of the newly dedicated pedestrian easement.
5. 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 and replace it with a 25' public pedestrian easement along the lot line. The proposed easement vacation is in the state's best interest. Changing the nature and scope of public access 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.



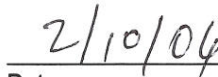
Andrew A. Gorn  
Natural Resource Specialist II



Date



Sandra J. Singer, Chief  
Realty Services Section



Date

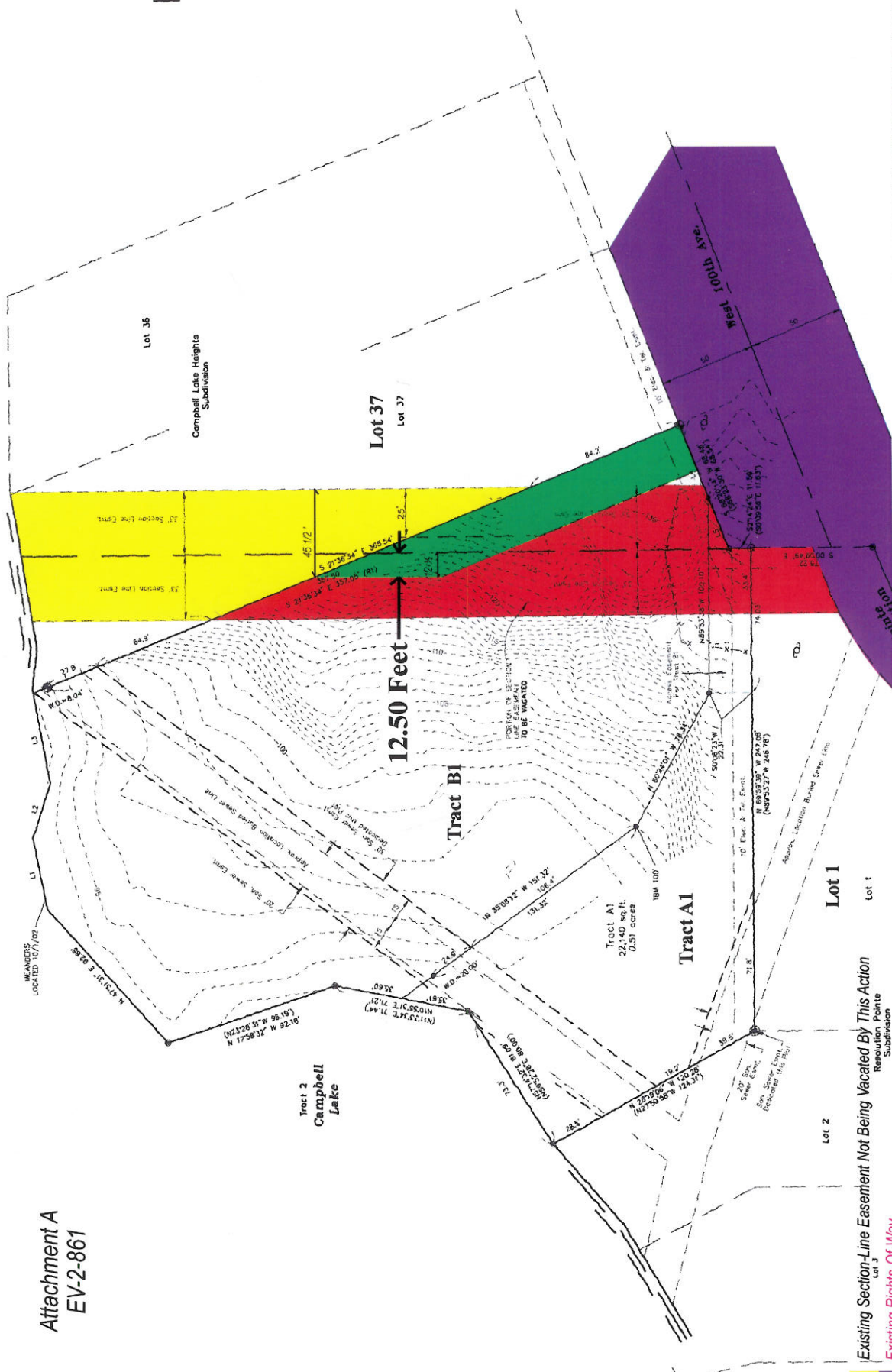
**PUBLIC COMMENT:**

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 vacating the 66-foot section-line easement (33-feet each side of the section line) within Tracts A1 & B1, Resolution Pointe Subdivision-Addition #1 (Plat No. 2002-146) and the 33-foot section-line easement within Lot 1, Block 1, Resolution Pointe (Plat No. 82-302). The proposed action is located in Sections 14 & 15, T. 12 N., R.4 W., S.M. Vacation of this section-line easement will remove the encumbrance it has on a parcel of land and allow the petitioners to build on the property. .

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 7<sup>th</sup> Avenue, Suite 1330, Anchorage AK, 99501-3514. Any comments, objections or expressions of interest must be received in writing at the above address no later than 5 PM on March 20, 2006. 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. 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-2-861 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 Gorn at 907-269-4755.

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 AM and 5 PM, Monday through Friday, at TDD No. 907-269-8411.

Attachment A  
EV-2-861



Existing Section-Line Easement Not Being Vacated By This Action  
 Existing Rights-Of-Way

25 Foot Wide Alternate Access  
 Section Line Easement to Vacate