

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

Preliminary Decision

Petitioners: Gale & Tanya Bourne

**Public Road Easement Vacation
and Replat of Lots 1 thru 9**

EV-3-305

Petitioned Action:

The proposed action consists of vacating all Public Road Easements (PRE) and replatting all lots within Windy Court Estates (Plat 88-24, Chitina Recording District) to facilitate the proposed Windy Court Replat, which in turn will create 20-foot wide public access and utility easements (PA&UE) to 17 new lots. This action lies in Section 8, T21S, R12E, FM.

The reason cited by the applicant for the vacation: "To facilitate new lot layout, creating 17 lots from 9 lots."

Legal Authority:

AS 29.03.030, AS 38.05.035(e), AS 38.05.945, AS 40.15.070, AS 40.15.300-.380, 11 AAC 51.065, 11 AAC 53.630-730. The Alaska Department of Natural Resources (DNR) is the platting authority for the state in the Unorganized Borough.

Administrative Record:

The DNR Survey Case File EV-3-305 constitutes the administrative record used for the basis of this decision.

Borough:

The proposed action is located within the Unorganized Borough (UoB).

State Easement Interest:

As noted above, DNR is the platting authority for the state in the Unorganized Borough. As such, DNR also acts on behalf of the public as the management authority for all public rights-of-way and other public easements dedicated to public use within the Unorganized Borough. The PRE proposed to be vacated were dedicated to public use (See Discussion 1 on page 2).

Underlying Interest:

The petitioners own the estate underlying said Lots 1-9, including the estate underlying the PRE proposed for vacation.

Alternate Route:

The proposed alternate route consists of the "to be dedicated" 20' Public Access and Utility Easement, as depicted on Attachment A.

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 (PRE):

A field inspection was not conducted; however, the petitioner's surveyor stated in a 9/17/2020 email "There is semi-constructed access within the road easements, but they do not completely lie within [the road easements proposed to be vacated] or outside them. There's basically a big circle driveway, a parking area and a couple little pull off areas. It was not constructed with the easements in mind, the easements on the old plat were for legal purposes, not actual physically built." In addition, he stated "It [the semi constructed access noted above] is only being used by the current owner of the whole property, Gale Bourne."

Practicality of Use (PRE):

The existing Road Easements as platted/dedicated are not practical because they do not provide the required public access to all 17 lots being created out of the 9-lot Windy Court Estates. The proposed relocations provide a more practical & constructible location for public & utility access.

Public Notice:

Public Notice (AS 38.05.945 and AS 40.15.305[e]). Public notice of this action will be provided to and paid for by the applicants for publication in a newspaper of general circulation. The notice will be sent by certified mail to property owners within 500 feet of the subject land, as well as other affected individuals and agencies. The post office in Meiers Lake will be requested to post the notice per AS 38.05.945(b)(3)(B). The notice will also appear in the Alaska Online Public Notice System.

Agency Review:

Initial Agency review of the proposed action began on March 26, 2019 and concluded August 28, 2020. Agencies notified included Department of Transportation/Public Facilities (DOT/PF) Northern Region, Alaska Department of Fish and Game (ADFG), DNR Division of Mining, Land and Water – Southcentral Regional Office (SCRO), Alaska Mental Health Trust Land Office (MHTLO) and DNR Division of Parks and Outdoor Recreation (DPOR).

Agency Comments:

1. Initially SCRO objected to the reduction of access width from 20' to 15'. In an email dated 7/14/2020 from Delta Survey Associates, the petitioner's surveyor stated that the "developer and our office believes the [15'] dedications are sufficient to provide access to all the new lots"; however, the petitioner agreed to dedicate 20' "if that is what it takes to meet approval from SCRO". In an email dated 8/28/2020, SCRO agreed that bringing the PA&UE to 20' would be acceptable.

2. All other agencies submitted comments of non-objection.
3. No other comments or objections on the proposed action were received.

Discussion:

1. Determination of the existence of the PRE:

The Public Road Easement was platted and dedicated to public use by the plat of Windy Court Estates. Said plat was recorded September 8, 1988 in the Chitina Recording District as Plat 88-24

2. Pursuant to 11 AAC 61.065, the proposed alternate route is equally useable and will be adequate to satisfy all present and foreseeable uses.

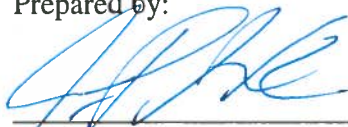
Approval of the proposed action is contingent upon the following conditions:

1. 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 is at the expense of the applicant.
2. Dedication of a 20-foot wide public access and utility easement (PA&UE).
3. Approval of a State Platting Resolution.
4. A final plat (owner signed/surveyor sealed mylar) must be submitted within 18-months from the date of the vacation approval. The survey plat must be filed in accordance with the provisions of AS 40.15.300-380 and in compliance with the provisions of 11 AAC 53.600-.900.
5. Submittal of a Certificate to Plat current within 90-days

Recommendation:

Based on our findings, the applicant meets DNR's requirements to vacate the subject Public Road Easement. The proposed vacation and replat 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 and 40.15.305(e).

Prepared by:

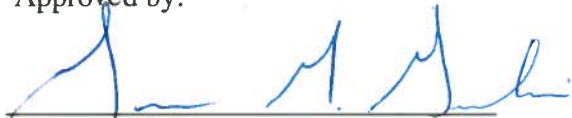


Joseph L. Poydack, RWA
Adjudicator

Date

10/1/2020

Approved by:



Gwen M. Gervelis, PLS
Chief, Survey Section

Date

10/2/2020

PUBLIC NOTICE:

**Notice of Preliminary Decision
Public Road Easement Vacation & Replat
EV-3-305**

Per 11 AAC 51.065, the Department of Natural Resources, Division of Mining, Land and Water has issued a Preliminary Decision (PD) giving contingent approval to a petition proposing to vacate all Public Road Easements and all lots within Windy Court Estates (Plat 88-24, Chitina Recording District) to facilitate the proposed Windy Court Replat, which in turn will create public & utility access to 17 new lots. This action lies in Section 8, T21S, R12E, FM.

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/>. **Persons wishing to comment on the proposed action must submit their comments in writing.** Correspondence must be addressed to Joe Poydack, DML&W, 550 W. 7th Ave., Suite 650, Anchorage, AK 99501, and received by **5:00pm, November 23, 2020** to ensure consideration. 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 Finding & Decision (FFD). To obtain PD/FFD copy, reference case number EV-3-305; 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.

Notice is hereby given that DNR, under the authority of AS 40.15.305 shall hold a public hearing to gather information and to obtain public input regarding the proposed action noted above. Due to mandates regarding the COVID-19 pandemic the public hearing will be held **via teleconference at 11:00am on November 24, 2020**. Persons wishing to attend the public hearing must call 1-800-315-6338, when prompted enter access code 99709 and #. Persons attending or not attending the public hearing may submit comments in writing as noted above.

To appeal under AS 38.05.035(i)(j), a person must either provide timely written comment or public hearing testimony.

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 3-305 Attachment A

Section 8, T21S, R12E, FM

