

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

RECEIVED FEB 21 2019

PRELIMINARY DECISION

Petitioner: Michael Coady
Public Access Easement Vacation

EV-3-294

PETITIONED ACTION:

The proposed action consists of vacating a 25' portion of the 50' wide AS 38.05.127 Public Pedestrian Access Easement (PPAE) lying within Lot 3, Block 1, ASLS 87-129 Middle Island Subdivision (Plat 89-22 Sitka Recording District. This action is located within Section 7, Township 55 South, Range 63 East, Copper River Meridian (See Attachment A).

The stated reason for this request is to alleviate encroachment of structures.

AUTHORITY:

AS 38.05.035(e), AS 38.05.127, AS 38.05.945, 11 AAC 51.045, 11 AAC 51.065.

The Department of Natural Resources (DNR) has authority for approving the vacation of this AS 38.05.127 public pedestrian easement.

ADMINISTRATIVE RECORD:

Department of Natural Resources Survey Case File EV-3-294 constitutes the administrative record used for the basis of this decision.

BOROUGH:

This action is located within the City and Borough of Sitka.

PUBLIC EASEMENT INTEREST:

A public access easement exists 50 feet upland of the line of mean high water pursuant to AS 38.05.127. (See Discussion)

UNDERLYING INTEREST:

The petitioner owns the estate underlying the public access easement (AS 38.05.127) proposed to be vacated.

ALTERNATE ROUTE:

The alternate access route for the AS 38.05.127 vacation is the remaining 25' portion of the 50-foot wide PPAE within Lot 3, Block 1, Middle Island Subdivision and a 25' to be dedicated public access easement (PAE), see Attachment A.

LAND MANAGEMENT POLICIES:

Pursuant to 11 AAC 51.065(f), 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 useable, 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 useable, 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:

At the present time it is unknown if the public is currently using the PPAE proposed to be vacated. Documentation submitted by the petitioner states in part "Few people, other than the previous owners of Lots 3, 4 & 5 (when they owned those properties), have ever been observed making use of the existing easement."

PRACTICALITY OF USE:

The portion of the PPAE proposed to be vacated runs through varied natural terrain. Documentation submitted with the petition states in part "Given the relatively rugged nature of the shoreline of Lots 3, 4 and 5, use of the tidewater access easement on Mr. Coady's lots is not likely to increase in the future. Practically speaking, the easement on the waterfront sides of Lots 3, 4 and 5 is only desirable for beach-combing. Reducing the width of the existing easement upland of mean high water on such lots from 50 feet to 25 feet would not serve in any way to impair beach-combing activities, either by neighbors or by members of the public." Encroaching structures are the only improvements in the PPAE. The retained portion of the PPAE and the to be dedicated 25' PAE may be sufficient for present and reasonably foreseeable future uses.

AGENCY REVIEW:

Agency review of the proposed action began on August 31, 2018 and concluded on October 28, 2018. State agencies notified were the Department of Transportation and Public Facilities Southcoast Region (DOT/PF), Department of Fish and Game (ADF&G), Department of Natural Resources, Division of Mining, Land and Water, Southeast Regional Land Office (SERO), Mental Health Trust Land Office (MHTLO) and Division of Parks and Outdoor Recreation (DPOR). A field inspection was not conducted for this petition.

AGENCY COMMENTS:

1. The original petition to vacate the upland 25' portion of the 50' PPAE in Lots 3, 4 & 5, Block 1, ASLS 87-129, was objected to by SERO and alternative suggestions were made by ADF&G. The revised proposal, as noted in this decision, was agreed to between the petitioner and said agencies.
2. All other agencies submitted comments of non-objection.
3. No other comments or objections on the proposed action were received.

PUBLIC NOTICE:

Public Notice (AS 38.05.945 and AS 40.15.305[e]). Public notice of this action will appear in the Alaska Online Public Notice System.

DISCUSSION AND FINDINGS:

1. Determination of the existence of the public pedestrian access easement.
 - a. Prior to conveyance into private ownership the reservation of a public access easement upland of the mean high water line on DNR lands is required under AS 38.05.127 and 11 AAC 51.045. The plat of ASLS 87-129 platted and dedicated a 50' PPAE upland of and contiguous with the mean high water line of Sitka Sound within said Lot 3.
 - i. AS 38.05.127 states in part: (a) Before the sale, lease, grant, or other disposal of any interest in state land adjacent to a body of water or waterway, the commissioner shall; (2) upon finding that the body of water is navigable or public water, provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water...
2. Pursuant to 11 AAC 51.065, the proposed alternate route is equally useable, protected by easements of record, which are adequately wide to satisfy all present and reasonable 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 the 25' PAE.
3. A final plat (owner signed / surveyor sealed Mylar) must be submitted to DNR within two years from the date of approval of the Final Decision unless extended by DMLW, Survey Section.
4. Submittal of a current Certificate to Plat.

Recommendation:

Based on our findings, the applicant meets DNR's requirements to vacate the subject section-line and public access easements. The proposed vacations may be in the State's best interest. Therefore, the Division of Mining, Land and Water, Survey Section recommends approval of these actions and may proceed with adjudication and public notice in accordance with AS 38.05.945.

Prepared by:

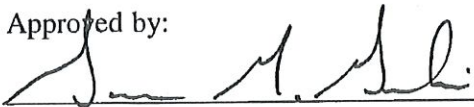


Joe Poydack
Adjudicator

Date

2/19/19

Approved by:



Gwen M. Gervelis, PLS
Chief, Survey Section

Date

2/19/19

PUBLIC COMMENT:

**Notice of Preliminary Decision
Public Access Easement Vacation EV 3-294**

Per 11 AAC 51.065, the Department of Natural Resources, Division of Mining, Land and Water has made a Preliminary Decision giving contingent approval to a petition to vacate a portion of the Public Pedestrian Access Easement lying within Lot 3, Block 1, ASLS 87-129, Middle Island Subdivision. This action is located within Section 7, Township 55 South, Range 63 East, Copper River Meridian.

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>. All comments must be received in writing at DMLW by 5:00 pm on March 20, 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 3-294; 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.

Individuals with disabilities, who require special accommodations, should call TDD (907) 269-8411 by 5 PM, March 20, 2019.



THE STATE
of **ALASKA**

GOVERNOR MICHAEL J. DUNLEAVY

Department of Natural Resources

DIVISION OF MINING, LAND & WATER
Survey Section

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Anchorage, Alaska 99501-3576
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Fax: 907.269.8914

February 19, 2019

City & Borough of Sitka
Scott Brylinsky
100 Lincoln Street
Sitka, AK 99835

Dear Mr. Brylinsky:

Subject: EV-3-294 Preliminary Decision and Public Notice

The proposed action consists of vacating a 25' portion of the 50' wide AS 38.05.127 Public Pedestrian Access Easement (PPAE) lying within Lot 3, Block 1, ASLS 87-129 Middle Island Subdivision (Plat 89-22 Sitka Recording District. This action is located within Section 7, Township 55 South, Range 63 East, Copper River Meridian.

Also enclosed is a copy of the *Public Notice of Preliminary Decision* which will be published on the State of Alaska Online Public Notices website, <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx>.





Any comments concerning the proposed action must be submitted in writing to DNR -- DMLW by **5 PM on March 20, 2019**. Contact DNR with questions at 907-375-7733 or joseph.poydack@alaska.gov or Stan Brown 269-8521 or stanley.brown@alaska.gov by March 20th.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Poydack".

Joe Poydack, RWA
DNR Adjudicator

Enc: Copy PD & Public Notice

-  25' Portion of Easement Proposed to be Vacated
 Portion of Easement Remaining
 Existing PAE
 25' PAE to be Dedicated