



HAINES BOROUGH, ALASKA
P.O. BOX 1209
HAINES, AK 99827
(907) 766-4600 FAX (907) 766-2716

July 2, 2020

From: Libby Jacobson, Planning and Zoning Technician

To: Haines Borough Planning Commission

**Re: Summary of Vacation of a Right of Way Submitted by William Prisciandaro
C-STR-02-1550 & 2210 Small Tracks Subdivision; Rural Mixed Use Zone**

Summary

William Prisciandaro and Penny Fossman are requesting a vacation of 613 feet of an existing Right of Way. It is a section of the existing ROW. The ROW line runs East-West dividing the 2.5 and 3 acre lots owned by Will and Penny.

The ROW is State owned and vacation must go through the Alaska Department of Natural Resources. In order to ensure that the public interest is also addressed at the local level, DNR requires that the applicant apply for the vacation with the local platting authority. The Planning Commission must provide a recommendation to the assembly.

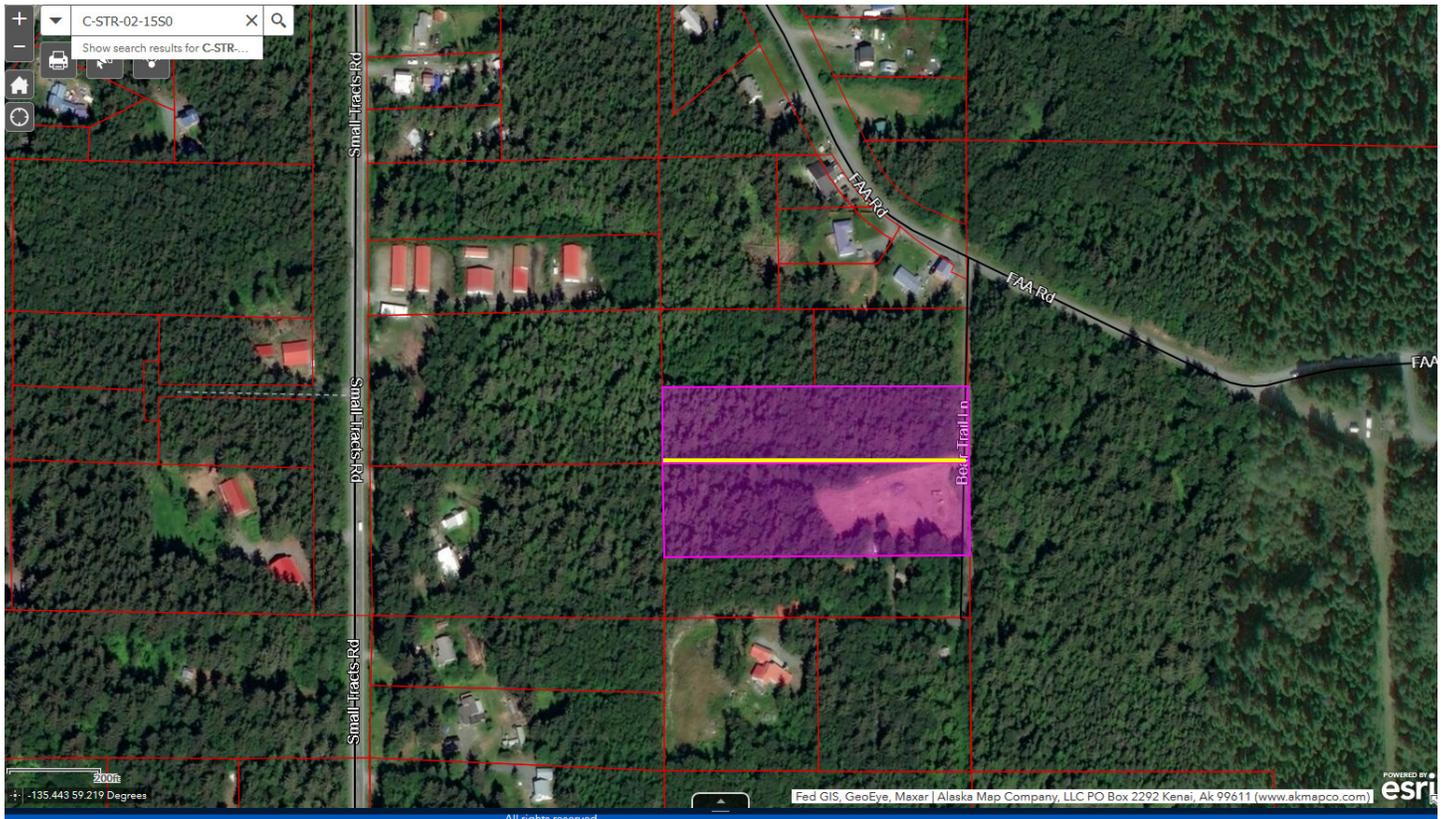
Staff Recommendation

It is Borough staff's advice for the Planning Commission to not recommend this vacation request to the Assembly for the following reasons:

1. It is in the Borough's interest to keep all opportunities open to create a thoroughfare between Small Tracks Road and FAA road via Bear Trail Lane.
2. Spur Road just south of this ROW has been considered a place to create a through road. If this option is unavailable, then the ROW in question should be considered.
3. Vacating this section of the ROW would not allow the Borough to obtain it from the State.
4. The existing ROW in line to the West through Bruce & Jenny Lynn Smith's property would become a "dead end" if the ROW in question were to be vacated.
5. Vacating a ROW is not generally encouraged in City Planning.
6. When and if the applicants choose to develop this property and present the plans, vacation of the ROW could be considered at that time.

Background

Patents on these properties designate a right of way for roadway and public utilities. After consultation with BLM, it has become clear that the "subject to" right of way no longer requires BLM involvement. The BLM had the land relinquished to the "Public" and there is no longer any rights held by the Federal Government. The State DNR does not identify a State interest in this case, and therefore does not require the retention of the ROW.



Notifications Sent to Surrounding Property

Re: Summary of Vacation of a Right of Way Submitted by William Prisciandaro
C-STR-02-1550 & 2210 Small Tracks Subdivision; Rural Mixed Use Zone

Dear property owner,

You have been identified as owning property within 500 feet of the above listed property. This is notification that there will be a public hearing regarding a Vacation of a Right of Way. This matter will be heard July 9, 2020 at 6:30pm in the Assembly Chambers. You are invited to provide testimony at the meeting or submit written comments to the Borough Planning & Zoning Tech at ljacobson@haines.ak.us. For more information, please call the Lands Dept. at 766-6400 ex3 or visit <https://www.hainesalaska.gov/pc/planning-commission-52>

OWNER1	OWNER2	OWNER3	OWNER4
BRUCE SMITH	JENNY LYN SMITH	BOX 471	HAINES AK 99827
c/o John FAIN	FAIN FAMILY REVOCABLE LIVING TRUST	179 N. CORRY ST.	FORT BRAGG CA 95437-3711
GLENDIA GILBERT		BOX 397	HAINES AK 99827
KEVIN R. SHOVE	LISA J. SELE	BOX 1256	HAINES AK 99827
PATRICK L. DUNBAR	DOROTHY A. BAZ	BOX 1418	HAINES AK 99827

Relevant Code:

State of Alaska
Title 29 . Municipal Government
Chapter 40 . Planning, Platting, and Land Use Development
Section 120-160

Sec. 29.40.120. Alteration or replat petition. (also HBC 14.32.010)

A recorded plat may not be altered or replatted except by the platting authority on petition of the state, the borough, a public utility, or the owners of a majority of the land affected by the alteration or replat. A platted street may not be vacated, except on petition of the state, the borough, a public utility, or owners of a majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting authority and shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

Sec. 29.40.130. Notice of hearing.

The platting authority shall fix a time for a hearing on an alteration or replat petition that may not be more than 60 days after the petition is filed.

Application was received 6/22/20

Notice shall be published by the platting authority stating when and by whom the petition was filed, its purpose, and the time and place of the hearing.

Notice was posted at the post office, grocery store, and Borough office. Notice was published in the newspaper and on the Haines Borough website.

The notice must generally describe the alteration or replat sought. The platting authority shall also mail a copy of the notice to each affected property owner who did not sign the petition.

Notifications were sent on 6/22/20.

Sec. 29.40.140. Hearing and determination.

(a) The platting authority shall consider the alteration or replat petition at a hearing and make its decision on the merits of the proposal.

(b) Vacation of a city street may not be made without the consent of the council. Vacation of a street in the borough area outside all cities may not be made without the consent of the assembly. The governing body shall have 30 days from the decision of the platting authority in which to veto a vacation of a street. If no veto is received by the platting authority within the 30-day period, consent is considered to have been given to the vacation.

Sec. 29.40.150. Recording.

If the alteration or replat is approved, the revised plat shall be acknowledged, filed, and recorded in accordance with AS 40.15.010 — 40.15.020.

Sec. 29.40.160. Title to vacated area.

(a) The title to the street or other public area vacated on a plat attaches to the lot or land bordering the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area that lies on one side of the boundary line shall attach to the abutting property on that side, and the street area that lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street that lies inside the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in a city if it lies inside the city, and in the borough if it lies inside the borough but outside all cities. If the property vacated is a lot, title vests in the rightful owner.

(b) If the municipality acquired the street or other public area vacated for legal consideration or by express dedication to the municipality other than as a subdivision platting requirement, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid to the municipality on final vacation.

(c) The provisions of (a) and (b) of this section apply to home rule and general law municipalities.

(d) The council of a second class city located outside a borough may vacate streets, alleys, crossings, sidewalks, or other public ways that may have been previously dedicated or established when the council finds that the streets, alleys, crossings, sidewalks, or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for another public purpose does not vest as provided in (a) of this section but remains in the city.

Haines Borough Code

Title 14 . Acquisition and Disposal of Borough Property

Chapter 14.32 . Vacation of Rights-of-Way

Sections 010- 030

14.32.010 State statutes applicable.

The provisions of AS [29.40.120](#) through [29.40.160](#), as amended from time to time, shall apply to the vacation of rights-of-way.

14.32.020 Assignment of costs.

All filing fees, land acquisition costs, administrative costs, processing fees, commission fees, recording fees, mapping costs, survey costs, and other associated expenditures shall be borne by

the applicant or applicants in prorated amounts as determined by the borough manager or designee.

14.32.030 Procedures.

The following are the procedures which shall be followed in a vacation of a public right-of-way request:

- A. *An application for the vacation shall be signed by all affected property owners and accompanied by an accurate paper plat created by a surveyor licensed by the state of Alaska showing the property in question, along with a \$100.00 nonrefundable filing fee, and filed with the clerk on a form provided by the borough.*

Applicant indicates he attempted to contact neighbors, however, no responses from neighbors have been received by the Borough (as of 7/2/2020).

- B. *The borough shall notify, in writing, all persons who own property within 200 feet of the proposed vacation, giving information on the location of the vacation and scheduling of a public hearing on the vacation at the next appropriate planning commission meeting.*

Borough Staff sent notifications 6/22/20.

- C. *The planning commission shall hold a public hearing on the requested vacation. This hearing must be advertised in the local newspaper at least seven days before the hearing takes place. The planning commission shall make its recommendation to the assembly regarding the request.*

- D. *If the assembly grants the vacation request, the applicant must have the vacated land surveyed and replatted by a registered land surveyor in a format suitable for filing with the State Recorder's Office.*

- E. *An assembly resolution must be adopted to authorize the disposal of any vacated rights-of-way. The resolution shall contain a statement that the assembly found the property surplus to its needs as a right-of-way. It must give a legal description of the property to be vacated, the names of the applicants to whom the vacation is to be granted, and the market value of the land to be vacated.*

.....

Libby Jacobson

From: Libby Jacobson
Sent: Wednesday, June 24, 2020 4:06 PM
To: 'blm_ak_gfo_general_delivery@blm.gov'
Subject: Vacation of a Right Of Way | BLM owned ROW
Attachments: MemoStaffReport.pdf; Plat and Deeds.pdf; Prisciaandaro ROW Application.pdf

Hello from Haines,

We have a person trying to vacate their right of way that is BLM land. Is there a procedure for this and do they have to go through the local borough as well? It is a rather old ROW deeded in 1959-1960. Any guidance is appreciated.

Thank you!

Libby Jacobson
Planning and Zoning Tech
Haines Borough
907-766-6400
www.hainesalaska.gov
ljacobson@haines.ak.us

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Libby Jacobson

From: Becker, Brenda <bbecker@blm.gov>
Sent: Friday, June 26, 2020 1:08 PM
To: Libby Jacobson
Cc: Hancock, Alysia M; Graham, Marnie
Subject: Vacation of a ROW

EXTERNAL EMAIL: Do not open links or attachments unless you recognize the sender and know the content is safe.

Libby,

I have the information that you need.

Basically, where the patents are "subject to" there is no right held by the Federal Government.

These subject to rights-of-way are common law dedications as referenced in the Supreme Court of Alaska 2013 decision. Thus, the Borough can work within State of Alaska laws to vacate these subject to rights-of-way on a case-by-case basis without the BLM's involvement.

I hope this helps.

Please let me know if you have more questions.

Brenda

Brenda Becker
Realty Specialist
Glennallen Field Office
P.O. Box 147
Glennallen, AK 99588

907-822-7321
Cell 907-320-1553



Haines Borough

Planning and Zoning
 103 Third Ave. S., Haines, Alaska, 99827
 Telephone: (907) 766-2231 * Fax: (907) 766-2716

RIGHT-OF-WAY VACATION APPLICATION

Permit#: 20-23
 Date Received: 6/22/20

I. Description of ROW to be Vacated:			
Street Name: <u>GOV'T Lot 22 except S132' + GOV'T Lot 15 S/2</u>			
Width (feet): <u>100</u>	Length (feet): <u>613.01</u>	Total Area (sq. feet): <u>61,301</u>	Length of parcel line frontage (feet): <u>100 Ft on west side</u> <u>613.01 Ft on north/south line</u>

II. Property Owner		Firm Preparing ROW Vacation (If Any)	
Name: <u>William Prisciandaro / Penny Fossman</u>		Name:	
Mailing Address: <u>PO Box 1716 Haines AK 99827</u>		Mailing Address:	
Contact Phone: <u>Will 802 272 3738 / Penny 802 377 2647</u>		Contact Phone:	
E-mail: <u>wpriscia@gmail.com</u> <u>pfofossman@hotmail.com</u>		E-mail:	

III. Property Information			
Property Tax #: <u>C-STR-02-2210 and C-STR-02-1550</u>			
Legal Description: Lot (s) <u>Lot 22 part off FAA and Lot 15 S 1/2 off FAA</u> Block _____ Subdivision _____			
OR Parcel/Tract _____ Section <u>2</u> Township <u>T315</u> Range <u>R59E</u>			
[Attach additional page if necessary.]			
Number of Existing Parcels: <u>2</u>	Total Land Area: <u>5.5 acres</u>	Zone: <u>Rural Mixed USE</u>	
Existing Structures? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Water Utilities: Public <input checked="" type="checkbox"/> On Site <input type="checkbox"/> None <input type="checkbox"/>	Sewer Utilities: Public <input type="checkbox"/> On Site <input type="checkbox"/> None <input checked="" type="checkbox"/>	
Unique Characteristics of Land or Structure(s): <u>NONE</u>			

14.32.020 Assignment of costs: All filing fees, land acquisition costs, administrative costs, processing fees, commission fees, recording fees, mapping costs, survey costs, and other associated expenditures shall be borne by the applicant or applicants in prorated amounts as determined by the borough manager or designee.

IV. DESCRIBE THE REASON(S) FOR VACATING RIGHT OF WAY:
<u>To provide more area for future lot development</u>

V. EXISTING USE OF SUBJECT RIGHT-OF-WAY: (e.g. Parking, EM Access, Utilities, Egress, Thoroughfare, etc.)
<u>NONE</u>

VI. PROPOSED USE OF SUBJECT RIGHT-OF-WAY:
 Allow for more area in the future for lot development

14.32.030 Procedures.

The following are the procedures which shall be followed in a vacation of a public right-of-way request:

- A. An application for the vacation shall be signed by all affected property owners and accompanied by an accurate paper plat created by a surveyor licensed by the state of Alaska showing the property in question, along with a \$100.00 nonrefundable filing fee, and filed with the clerk on a form provided by the borough.
- B. The borough shall notify, in writing, all persons who own property within 200 feet of the proposed vacation, giving information on the location of the vacation and scheduling of a public hearing on the vacation at the next appropriate planning commission meeting.
- C. The planning commission shall hold a public hearing on the requested vacation. This hearing must be advertised in the local newspaper at least seven days before the hearing takes place. The planning commission shall make its recommendation to the assembly regarding the request.
- D. If the assembly grants the vacation request, the applicant must have the vacated land surveyed and replatted by a registered land surveyor in a format suitable for filing with the State Recorder's Office.
- E. An assembly resolution must be adopted to authorize the disposal of any vacated rights-of-way. The resolution shall contain a statement that the assembly found the property surplus to its needs as a right-of-way. It must give a legal description of the property to be vacated, the names of the applicants to whom the vacation is to be granted, and the market value of the land to be vacated.
- F. Applicants granted a vacation of a public right-of-way shall pay to the borough an amount not less than the current assessed value of the vacated property as determined by the assessor or land manager.

From list sent Planning + Zoning Tech

VII. PROPERTY OWNERS ADJACENT TO RIGHT-OF-WAY TO BE VACATED				
LANDOWNER'S SIGNATURE	LANDOWNER'S NAME (PRINTED)	STREET ADDRESS / LEGAL DESCRIPTION	LENGTH OF FRONTAGE ALONG ROW	PERCENTAGE OF TOTAL FRONTAGE
	Bruce Smith	652 Small Tracts Rd	50'	50% of west side of ROW
	John Fain	Lot 13 N 1/2 Small Tracts Rd	0	0
	Gilenda Gilbert	649 FAA Rd	0	0
	Kavin Shave	665 FAA Rd	0	0
	Patrick Dunbar	628 Small Tracts Rd	0	0
	Bruce Smith	668 small Tracts Rd	50'	50% of west side of ROW

VIII. CURRENT ASSESSED VALUE OF RIGHT OF WAY

Total Square Feet 41,300 x Assessed Value \$0.374 = \$ 21,087.2

Dean M. Nelson
 Signature of Assessor or Land Manager

Note: This is an assessed value estimate only and is subject to change to fair market value before final review.

IX. CERTIFICATION

I hereby certify that I am the owner or duly authorized owner's agent, that I have read this application and that all information is correct. I further certify that I have read, understand and will comply with all of the provisions and application requirements outlined hereon. I also certify that the plats and/or surveys submitted are complete and accurate, showing any and all existing and proposed structures on the subject property. **I am aware that if I begin construction prior to receiving plat amendment approval and permit approval, I will be assessed a \$250.00 "After-the-Fact" fee.**

WoePA
 Owner or Agent

6/19/20
 Date

PROVISIONS: The applicant is advised that issuance of this application will not relieve responsibility of the owner or owner's agents to comply with the provisions of all laws and ordinances, including federal, state and local jurisdictions, which regulate construction and performance of construction, or with any private deed restrictions.

Office Use Only Below This Line

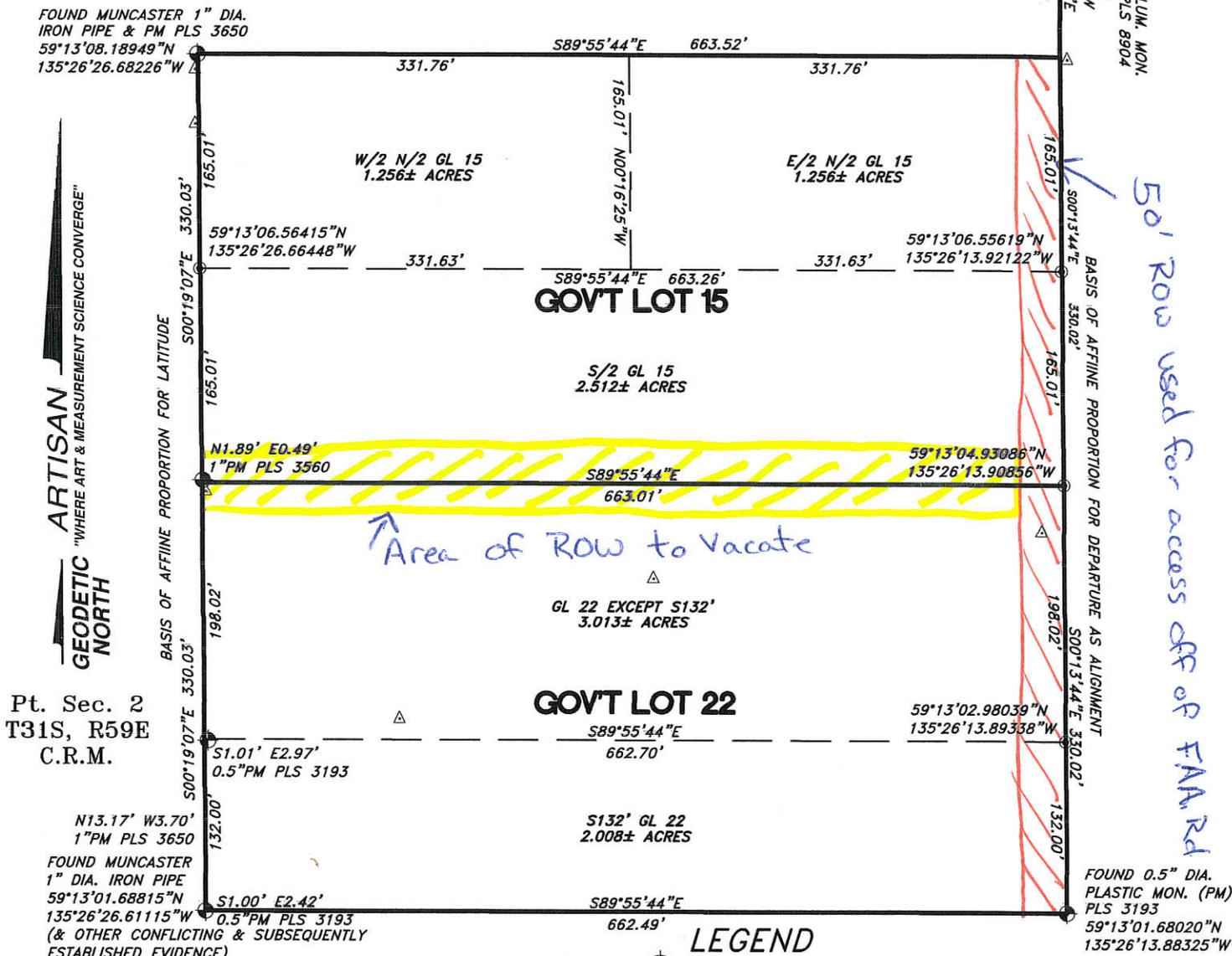
<input type="checkbox"/> Applicant Notified Application is Complete and Accepted _____ <small>(Date) (Notified via) (Initials)</small>		
Non-Refundable Permit Fee \$ 100.00 Receipt No. <u>029540</u> Received By: <u>[Signature]</u> Date: <u>6/22/20</u>	Information/Documentation Required <input type="checkbox"/> Completed Application Form <input checked="" type="checkbox"/> \$100 Non-Refundable Fee <small>(Checks must be payable to the Haines Borough)</small> <input checked="" type="checkbox"/> Most recent plat as recorded with the State of Alaska Department of Natural Resources <input type="checkbox"/> As-built Survey <small>(may be required if there are existing structures on the lot)</small> <input type="checkbox"/> Amended draft plat showing proposed right-of-way vacation <small>(Required prior to Assembly Approval)</small>	
Approval Signature: _____	Date _____	
Planning commission recommendation to assembly: <input type="checkbox"/> Recommend <input type="checkbox"/> Not Recommend _____ <small>(Planning Commission Chair) Date Date of Public Hearing</small>		
Assembly Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Copy of resolution attached		
Resolution # _____	Date of Adoption _____	

Notice of Right to Appeal: All decisions of the Borough Officials are appealable per HBC 18.30.050

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

CADASTRAL SURVEY RETRACEMENT DIAGRAM

PART, SECTION 2, T31S, R59E C.R.M. RECONSTRUCTION OF LOCALLY ACCEPTED AND BEST AVAILABLE EVIDENCE OF FIELD CONDITIONS AS OF JULY 25, 2014



50' ROW used for access off of FAA Rd

Area of ROW to Vacate

Form 4-1212
(April 1959)

Juneau 011780

The United States of America

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at **Juneau**, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of **June 1, 1938 (52 Stat. 609)**, as amended by the Act of July 14, 1945 (59 Stat. 467), and the acts supplemental thereto, the claim of **Thomas Helms**

has been established and that the requirements of law pertaining to the claim have been met, for the following-described land:

Copper River Meridian, Alaska.

T. 31 S., R. 59 E.,

Sec. 2, Lot 15.

The area described contains **5.00** acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to (1) any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat., 391, 43 U. S. C. sec. 945), and (3) the reservation of a right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under authority of the United States or by the State of Alaska, in accordance with the act of July 24, 1947 (61 Stat., 418, 48 U. S. C. sec. 321d). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat., 305, 48 U. S. C. sec. 305).

Excepting and reserving, also, to the United States all oil, gas and other mineral deposits, in the land so patented, together with the right to prospect for, mine, and remove the same according to the provisions of said Act of June 1, 1938.

This patent is subject to a right-of-way not exceeding 50 feet in width, for roadway and public utilities purposes, to be located along the east and south boundaries of said land.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the **THIRD** day of **DECEMBER** in the year of our Lord one thousand nine hundred and **FIFTY-NINE** and of the Independence of the United States the one hundred and **EIGHTY-FOURTH**.

[SEAL]

For the Director, Bureau of Land Management.

By *Ruth W. Talley*
Chief, Patents Section.

Patent Number 1202286

Form 4-1212
(April 1960)

Juneau 011900

The United States of America

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of June 1, 1938 (52 Stat. 609), as amended by the Act of July 14, 1945 (59 Stat. 467), and the acts supplemental thereto, the claim of Hugh McGruder Thompson

has been established and that the requirements of law pertaining to the claim have been met, for the following described land:

Copper River Meridian, Alaska.

T. 31 S., R. 59 E.,

Sec. 2, Lot 22.

The area described contains 5.00 acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to (1) any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat., 391, 43 U. S. C. sec. 945). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat., 305, 48 U. S. C. sec. 305).

Excepting and reserving, also, to the United States all oil, gas and other mineral deposits, in the land so patented, together with the right to prospect for, mine, and remove the same according to the provisions of said Act of June 1, 1938.

This patent is subject to a right-of-way not exceeding 50 feet in width, for roadway and public utilities purposes, to be located along the north and east boundaries of said land.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the TWENTY-FOURTH day of JANUARY in the year of our Lord one thousand nine hundred and SIXTY-TWO and of the Independence of the United States the one hundred and EIGHTY-SIXTH.

[SEAL]

For the Director, Bureau of Land Management.

By Ruth W. Talley
Chief, Patents Section.

Patent Number 1225028



Haines Borough
BOROUGH ASSEMBLY
ACTION REQUEST

DATE: June 9, 2020

TO: Borough Assembly

FROM: Borough Planning Commission

SUBJECT: Vacation of a ROW

ACTION:

_____ moved to recommend the assembly approve/deny the vacation of the Right-of-Way and the motion carried _____.

RATIONALE:

William Prisciandaro and Penny Fossman are requesting a vacation of a 663 foot Right of Way. The ROW line runs East-West dividing the 2.5 and 3 acre lots. The ROW is State owned and vacation must go through the Alaska Department of Natural Resources. In order to ensure that the public interest is also addressed at the local level, DNR requires that the applicant apply for the vacation with the local platting authority.

BOARD REQUEST:

The Planning Commission requests that the Assembly _____ the Vacation of the Right of Way.

SUBMITTED BY _____

Diana Lapham, Chair
Haines Borough Planning Commission