

Subdivisions In The Unorganized Borough
Common Oversights & Issues

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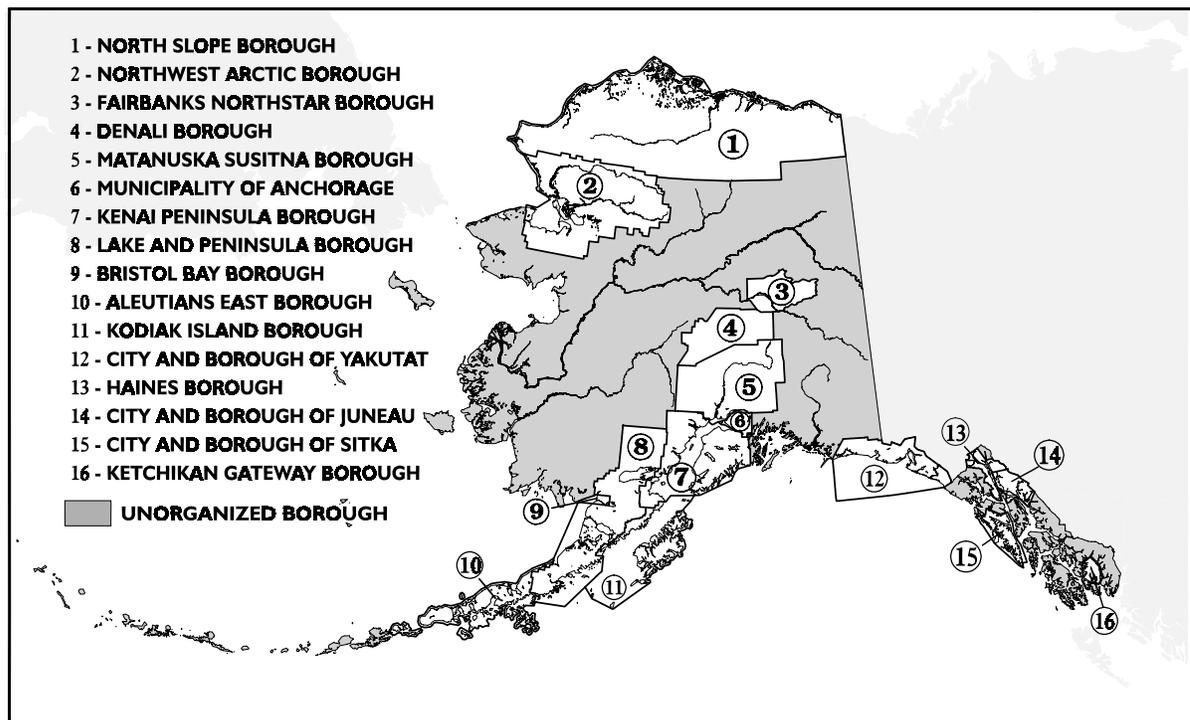
ABSTRACT

The purpose of this paper is to familiarize the reader with common oversights and issues frequently encountered during DNR's platting process. This paper will also address some of the most common questions asked about DNR Platting Authority under AS 40.15. An awareness of some of the typical problems, misunderstandings and questions will save the surveyor and client time and money.

Some of the issues are:

- Minimum Monumentation Requirements
- Incomplete Plat Submittals
- Requirement for a Certificate to Plat
- Beneficiary Approval
- Legal Access and Dedications
- Vacations and Replats
- Ownership of Navigable Water
- RS 2477 Trails
- Native Allotments in Restricted Status

The Unorganized Borough within the State of Alaska



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I. INTRODUCTION

AS 40.15, Article 4, which established the DNR as the platting authority for the Unorganized Borough was implemented on August 18, 1998. In the intervening 3 ½ years that DNR has been exercising platting authority, procedures for reviewing and processing subdivision plats in the Unorganized Borough have been established. In October 2001 DNR'S regulations for subdivisions in the Unorganized Borough became effective. These regulations can be found in 11 AAC 53, Article 5. Platting Authority In the Unorganized Borough.

Having only 3 ½ years experience behind us new issues and questions arise on a frequent basis. The intent of this paper is to inform the survey community of what some of these issues are and to address the most frequently asked questions.

II. FREQUENTLY ASKED QUESTIONS

Below are a number of the most frequently asked questions regarding DNR platting authority, along with the response.

- *Where can I find information on DNR platting authority?*
 - On the web at <http://www.dnr.state.ak.us/mlw/survey/index.htm>
 - Bill Brown, Platting Officer, @ Bill_Brown@dnr.state.ak.us
 - George Horton, Platting Technician, @ George_Horton@dnr.state.ak.us
- *Who is the platting authority forand how can I verify it?*
 - Sometimes it is difficult to do as there is no single source database to research and many community officials are not aware of their own ordinances.
 - Appendix B is a list of known Borough and Municipal Platting Authorities that has been compiled by DNR. However, we cannot assure you that it is current or complete.
 - The Department of Community and Economic Development's (DCED) Community Profiles on the web. Caveat; some of the profiles are not up to date and do not contain complete information. Some communities have Planning Commissions but have not adopted any subdivision regulations by ordinance as required by AS 29.40.070. Communities that are exercising platting authority should be able to furnish a copy of their platting regulations codified by a Title Number or Ordinance Number.
- *Where does DNR get the authority to require?*
 - Most requirements can be found under AS 29.40.100 Information required on plats, AS 29.40.120 Replat Petition, AS 29.40.180 Prohibited Acts, AS 40.15 Subdivisions and Dedications, AS 40.17 Recording in Public Records, and 11 AAC 53.600-.900 Unorganized Borough Platting Authority. Appendix C is a Table of Authority.
- *What are the requirements for minimum lot size, wastewater disposal and subdivision design?*

- DNR considers these items to be engineering standards. AS 40.15.340 expressly prohibits DNR from establishing engineering standards.
- *Who manages or issues permits for construction in platted row's?*
 - If there is a local municipality to accept the dedication that municipality would manage the row's. If not, DNR accepts the dedication on behalf of the public but does not manage or issue permits for the construction of improvements (11 AAC 53.640).
- *What does DNR check for when performing a plat review?*
 - Appendix E is a list of items checked during plat review.

III. INCOMPLETE SUBMITTALS

- At DNR'S discretion a first submittal may be reviewed if the submittal is incomplete, however a plat will not be reviewed unless a Certificate to Plat has been received.
- Second submittals will not be reviewed unless the submittal is complete including the supporting documentation.
- An updated Certificate to Plat, current within 90 days, along with the filing fee is required at the time the final mylar is submitted for filing.

IV. UNSUBDIVIDED REMAINDERS

- Subdivision means a subdivision of the entire parent parcel and not just a portion of it. A frequently occurring situation is when a surveyor surveys, monuments and plats a parcel that is proposed for sale but ignores the remainder.
- Unsurveyed remainders are allowed as long as the remainder is larger than 40 acres.
- Remainders smaller than 40 acres are to be surveyed and platted just as any other subdivision lot. This sometimes requires that the surveyor return to the field to establish additional monumentation or document that record monuments exist as required by 11 AAC 53.680.

V. MONUMENTATION REQUIREMENTS

- AS 40.15.320 requires that subdivisions of five or fewer lots be monumented with at least a 5/8 inch x 24 inch rebar and cap at controlling exterior corners of the subdivision.
- For subdivisions having six or more lots, it is required that each interior corner shall be monumented with at least a 5/8 inch x 24 inch rebar and cap. This includes all angle points and points of curvature.
- The requirement for having a cap attached is frequently overlooked and may require an un-necessary return trip to the field.

VI. LEGAL ACCESS

- 11 AAC 53.640 (b) requires that rights of way must be dedicated for access to all lots within the subdivision. Private access easements do not meet this requirement. The dedication to the public must be accepted by the appropriate authority. If there is no local government or municipality to accept the dedication, DNR accepts the dedication on behalf of the public.
- Access by navigable water is legal access.
- The access may be by easement or by platted row's that segregate title, however it must be dedicated to the public.
- Our regulations do not specify any row width other than to say that dedications must be sufficient to carry all traffic generated by the subdivision and projected to travel through it and must be sufficient to provide for the maneuvering of emergency vehicles.
- Subdivisions in areas serviced by utility companies shall make provisions for utility easements [11 AAC 53.630 (3)].
- The DOT/PF has the authority to manage and control activities within the Alaska Highway System, including the right to control and limit access and to issue encroachment permits for driveways. All subdivision plats abutting or adjacent to DOT/PF row's shall be submitted to DOT/PF for review and comment. The subdivider will be required to address DOT/PF'S concerns prior to receiving final plat approval. *Warning, some surveyors have had to redesign and restake their subdivision because they didn't first obtain DOT/PF 'S approval for limited access.*
- Unplatted row's in unsurveyed townsites subject to a future ANCSA 14 (c) survey are considered to be legal access because Section 14 (c) provides that row's be reserved for public access.

VII. OWNERSHIP OF NAVIGABLE WATER

- The Submerged Lands Act of 1953 confirmed that title to the beds of navigable water was vested in the states or held in trust by the federal government for future states. When Alaska entered the union the state automatically became the owner of the beds of navigable water bodies.
- A number of the older U.S. Special surveys did not meander or exclude navigable water bodies from the survey. However, the patent did not include the beds of these water bodies as part of the conveyance because the federal government as trustee had no title to convey.
- Subdivisions which contain navigable water must meander the water and plat it as an exclusion. This is an area where DNR wears two hats, one as the platting authority and the other as protector of state interest.
- For subdivisions which are bounded by the mean high water line or the ordinary high water line of state owned navigable water, the boundary shall be determined as set forth in 11 AAC 53.120 (1) & (2).

VIII. WHY A CERTIFICATE TO PLAT IS REQUIRED

- A Certificate to Plat is required to verify that the subdivider is the owner of record.
- The certificate will also identify Beneficiary Interests such as mortgages, tax liens and child support liens all of which are a property interest.
- The certificate will also show public access and utility easements and other 3rd party interests such as exclusions and reservations, which are not in the patent or deed.
- Restrictive covenants recorded with a prior subdivision will also be noted in the Certificate to plat.
- For Native Allotments in restricted status, a BIA Land Status title report will be accepted in lieu of a Certificate to plat.

IX. RESTRICTED NATIVE ALLOTMENTS

- Although subdivisions of Native Allotments in restrictive status fall under the jurisdiction of the federal government and are not subject to DNR requirements, BIA has chosen to submit them to DNR for approval in order that the plats can be filed in the state recording office.
- Restricted means that the title is held in trust by BIA and the land is protected against taxation and alienation, and cannot be conveyed or encumbered without approval by the Secretary of Interior acting through BIA.
- Subdivisions of restricted allotments are approved by the Regional Director of BIA in Juneau. It can take several months to obtain this approval.
- Since these allotments enjoy protected status they are not subject to beneficiary interests.
- Dedication of rights of way on Native Allotments is a problem because BIA doesn't recognize the signing of the Certificate of Ownership and Dedication as dedicating legal public access under federal law because of the "Inalienable" clause in the Alaska Native Allotment Act of 1906. BIA is working with various platting authorities to find a solution.
- In order to dedicate legal access, under federal law, BIA must first go through a process whereby they advise the allottee of what rights he is conveying away and also what the value of the grant is. The current proposal is for BIA to prepare either a Grant of Right of Way Easement (for easements) or a Quit Claim Deed (for surveyed row's), conveying fee title, to be signed by the allottee and the Regional Director of BIA. The grant or conveyance must also be accepted by some entity on behalf of the public. This is a new issue and the details are still being worked on.
- After the grant or deed has been accepted and recorded the allottee can subdivide under state law. However, there is no reason that these activities cannot occur simultaneously.

X. VACATIONS AND REPLATS

Definition of Replat and Vacation 11 AAC 53.900(52) – “replat” means the redelineation of one or more existing lots, blocks, tracts, or parcels of a previously recorded subdivision or other survey that involves the change of property lines, or in the case of a vacation, the altering or eliminating of dedicated streets, easements or public areas.

- AS 40.15.305(e) states in part “A recorded plat may not be altered or replatted except on petition of.....The provisions of AS 29.40.130 and 29.40.140(a) apply to an alteration or replat submitted under this section.”
- Frequently plats are submitted that create new subdivision lots ovetop of existing parcels of record that need to be replatted. If the replat or vacation activity is not addressed prior to the first plat review it can easily delay the project for up to 90 days because of the requirements for public notice, hearing and decision.

XI. RS 2477 TRAILS

- RS 2477 trails are row’s reserved to the public under the Mining Law of 1866. Though this act was repealed in 1976 it did not extinguish prior existing rights.
- RS 2477 row’s are managed by DNR under the authority of 11 AAC 51.100.
- RS 2477 row’s crossing the property being subdivided are to be surveyed and platted as public access easements. Typically this means an as-built of the existing route.
- Information on RS 2477 row’s including research sources can be found in Appendix G, a Fact Sheet on RS 2477 row’s.
- Vacation of RS 2477 easements is being addressed in another presentation at the conference later today.

XII. VARIANCES

- Any request for a variance of Article 5, 11 AAC53 must be put in writing along with a justification for the request.
 - No waiver of the requirement for legal access will be granted.

XIII. COMMON PITFALLS OR OVERSIGHTS

- DNR is not the platting authority because local government is exercising platting authority.
- Incomplete submittal.
- Surveyor required to return to the field to set required monuments.
- Plat doesn’t show how the parent parcel was established in the field.
- Plat doesn’t acknowledge 3rd party interests identified in Certificate to Plat.
- Plat doesn’t address vacation/replat activity.
- Ownership Certificate:
 - Name shown in Ownership Certificate is not the owner of record.

- BLM decision to convey is not ownership because the decision is subject to public notice, appeal and reversal. An interim conveyance (I.C.) is treated as ownership.
- Original allottee is deceased and the estate hasn't gone through probate to identify the legal heirs.
- Person signing on behalf of a corporation is not authorized to sign.
- Ownership has changed during the course of the project. For example the record owners convey the parent parcel to a trust before the subdivision is completed.
- Owner's signature not properly notarized on final mylar.
- Text/graphics doesn't meet legibility requirements of Recorder's Office.
- Surveyor hasn't contacted DOT/PF for comments prior to designing and monumenting the subdivision.
- Not enough data in the title block for District Recorder to index by location
- Survey not shown correctly in the vicinity map.
- Plat not given a thorough in-house review prior to submittal to DNR.
- Second submittal doesn't thoroughly address comments in the first review letter.

XIV. SUMMARY

Being aware of some of the typical problem areas and issues will save both the subdivider and surveyor time and money. Making complete submittals and thoroughly reviewing the plat in-house will reduce the amount of time DNR spends performing plat reviews and accelerate the review process.

The most common items that delay the review and approval process are:

- Incomplete submittal
- Minimum monumentation requirements not met
- Legal access issues not resolved prior to plat submittal
- DOT/PF not contacted for comments prior to submittal
- Replat or vacation activity not addressed until it is brought to the surveyor's attention in the review letter. This can delay the project by ninety days because of the requirements for public notice and hearing.
- Final mylar returned to surveyor because the owner's signature wasn't notarized properly.

When subdividing land in the Unorganized Borough a lot of the problem areas can be avoided or minimized by addressing the requirements up front. DNR platting staff is willing to work with the surveyor early on in order to make the process function more smoothly for everyone involved.