

Fairbanks North Star Borough Comprehensive Recreational Trails Plan



Appendix A. Trail Protection Toolkit: Techniques and Strategies for Public Access



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Trail Protection Toolkit: Techniques and Strategies for Public Access

The following are evaluations of techniques and strategies that can be used by the Fairbanks North Star Borough for the protection of trails to ensure their recreational uses continue. Evaluations consider the processes (how access is to be granted and accepted) and the recording instrument (how are delineated property interests recorded). These and other processes can continue to be reviewed, improved, or amended where possible, prioritized and considered in concert with the wide variety of situations that may affect different trails and parcels of land.

FNSB Code Title 17 “Subdivisions”

The subdivision and platting process outlined in FNSBC Title 17, Subdivisions requires that, in the event of subdivision, easements be dedicated for Category A & B trails that pass through the property. The easement width and intended use for existing and realigned trails, as well as some limited grade, slope and geometry requirements are included.

Easements granted through this process are recorded on a paper plat that details the trail and all other characteristics of the property subdivision.

Pros:

- Easement is typically perpetual; not short-term and does not have to be renewed.
- Alteration (“vacation”) of an easement requires public process.
- Requires survey for clarity and accuracy.

Cons:

- Protection only occurs during subdivision, but land may never be subdivided. If land not subdivided, trail is not protected. Cannot rely solely on this tool.
- Costly (typically requires a survey and a fee for a Major Plat).
- Broad definition of “Dedication” and “Subdivision” in Borough code such that an owner’s generous grant of trail easement may effectuate the Major Plat Subdivision process, and thus initiate unwanted review or changes to property (e.g., road construction requirements, other subdivision requirements, etc.).
- Time consuming.
- Hard to change trail location in event of migration or use designation in event of new trends or management.
- Reactive; requires the owner initiate the subdivision process.

Purchase Easements via FNSB Title 20.12 Land Acquisition

FNSB Code Title 20.12 contains the process for land acquisitions by the Borough.

Pros:

- Owner is compensated.
- One of few options currently available that allows room for negotiation, though limited, depending on circumstances.
- Proactive: FNSB can work directly with landowners to initiate the process if parties are willing.



Cons:

- Little room for negotiation still; requires Assembly Resolution if more than Fair Market Value and must meet other criteria in FNSBC 20.12.020.
- Refers to process for acquiring easement but does not answer how it should be recorded.
- Lacks clear language about acquiring easements for public use of trails.
- Though the easement would be accepted for the purpose of public use, its formal recipient is likely the “FNSB” rather than the “public” (also to distinguish this process from a “dedication” and subsequent initiation of the subdivision process). This may affect perception of the FNSB’s level of involvement and responsibility for the trail. Title 20 may only be appropriate for Category B trails for which the Borough intends to assume management responsibility.

Alaska Public Recreational Easement (AS 34.17.100)

Alaska Department of Natural Resources provides form 201-4054 for a landowner to record a Public Recreational Easement.

Pros:

- Simple and fast; can be completed by property owner with minimal cost, time, or expertise.
- Minimal mapping requirements are more flexible as trails migrate or use designation changes.
- Accessible to private property owners; does not require public hearings, professional services or technical knowledge.
- Provides a template that FNSB can modify or accept with pre-determined conditions.

Cons:

- Limited standards (duration, description) may present unacceptable risks for FNSB and trail users; community may need more assurances to accept the easement than are offered.
- Period of protection determined by owner. Perpetual access not guaranteed.
- Mapping requirements may be insufficient and lead to confusion of easement location.
- Uncertainty over who manages the easement or FNSB’s role in non-Plan trails recorded this way.
- Records don’t go through FNSB but are recorded with the State. FNSB does not have a process to formally accept one of these easements or allow public to review. FNSB may not even know of an easement until some other issues happens on the trail or property.
- Unclear whether or how this process may interact with FNSB Title 17 Subdivisions and AS 29.40.090 Abbreviated Plats & Waivers, but in general abbreviated plats cannot be used for “dedications.”

Revised Statute 2477 Easements

Historic trails under State management protected via Revised Statute 2477 (RS 2477), Section 8 of the Mining Act of 1866. Generally protected within 100 ft. wide rights-of-way.

Pros:

- Already researched and have been identified. While some may not be fully adjudicated, the State has asserted their interest on behalf of the public.



- Open to highway vehicles; minimal restrictions for use.
- Transportation corridors; more and different funding sources may be available than for purely recreational trails.
- If in Trail Plan, FNSB reviews platting of the right-of-way.
- Relatively wide right-of-way (typically 100 ft) may allow for trails to be incorporated or realigned within the ROW alongside a road.

Cons:

- Intended for highway use; they can become roads and displace trail use.
- Open to highway vehicles, but historic route may not be on suitable ground. Unchecked vehicle use may degrade trail and displace other trail uses.
- Unlikely to have restrictions that protect trail for recreation (see Rex Trail history).
- State-managed. Difficult or unlikely to incorporate FNSB policy in management of trail.

Section Line Easements

Easements that may exist along certain boundaries corresponding to section grids on a USGS topographic quadrangle map. Easements are reserved and managed by the State of Alaska for transportation and highway purposes.

Pros:

- Same as RS2477.

Cons:

- Same as RS2477.
- Typically, poor alignment. Drawn on a grid of cardinal directions. Does not obey topography or follow historic travel route.
- Sometimes less right-of-way than RS2477. Easement widths vary depending on date of entry/survey and presence or absence of easement on either side of section line. Total widths may range from 30 ft – 100 ft.

Fee-Simple Land Purchase or Transfer (FNSB Code 20.12)

A land purchase or exchange resulting in fee-simple, outright ownership of all land interest.

Pros:

- Can eventually be managed under FNSB park powers.
- Flexibility in management and regulations.
- Flexibility in trail design, alignment, and trends in use over time.
- Protects area around trail, not just corridor.
- Single owner simplifies management.
- Borough process; community has input on purchase and management through public hearings, Boards and Commissions



Cons:

- Likely requires most real-estate compared to other options, such as a narrow, linear easement.
- Additional acreage/area likely more costly.

Cooperative Agreements

Agreements of various types and forms are intended for use with major landowners in the FNSB (such as the Bureau of Land Management, State of Alaska, etc.). Each landowner may have different preferences. FNSB needs to determine what kind of agreements or substance needs to be captured in these agreements.

Pros:

- Room for negotiation with major landowners.
 - Decides whether access is granted, where to, and how it gets recorded.
- Flexibility in timeline.
- Flexibility in format (lease, use license, permit, memorandum of understanding, etc.).
- Can address major gaps (the majority of trails in the Borough are on these major landowners' property).

Cons:

- Certain kinds of agreements (leases >5 years) are still subject to Title 17.
- Only realistic for landowners with considerable property and resources (DNR, MHTLA, UA Lands, Native Corps, Railroad, etc.).
- Uncertainty; subject to changes in partner-landowner management, political swings, etc.
- Unlikely to have perpetual access unless Title 17 is initiated.
- Other landowners have different missions and constituents; do not owe duty to trail users. Viability of agreement success is dependent on trail user behavior; property ownership needs to be respected for landowner to maintain agreement.
- Crafting and coming to agreement may be time consuming, taking months or years to negotiate terms.

Prescriptive Easements (AS 09.45.052 Adverse Possession)

The law of adverse possession may allow the Borough to obtain a court order establishing a prescriptive easement over a trail if the public has used it openly and continuously for 10 or more years with a “good faith but mistaken belief” of ownership; such a belief is not required if the ten years of use occurred before 2003.

- Pros:
- Option to pursue historic trail access from property owners who cannot be negotiated with.
 - May be used to protect historic trails.

Cons:

- Factually sensitive and complex area of the law
- Only some, possibly rare cases will succeed.
- Cost of legal fees are likely much higher than negotiating.
- Long timeline, depending on courts, appeals, etc.



- Outcome is not certain.
- Considered after exhausting other options.
- Refers to process for acquiring easement but does not answer how it should be recorded/documented (clear and accessible documentation will be important to defend the trail in the event of future encroachments).
- Not a practical way for the FNSB to be part of a trail acquisition.

Eminent Domain

FNSB has limited powers per Title 20.12.050. If applicable, it is the method of last resort.

Pros:

- Option for property owners who cannot be negotiated with.
- Owner is compensated.

Cons:

- Expensive.
- Heavy-handed.
- Likely politically unpopular. Should be seen as very last resort after exhausting all other options.
 - Assembly approval required.
- Refers to process for acquiring easement but doesn't answer how it should be recorded/documented (clear and accessible documentation will be important to defend the trail in the event of future encroachments).