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10	How can AS 38.05.035 give DNR authority over an easement? That law deals with state land.	Title 38 applies not only to land owned outright by the state, but to state-owned "interests" in land. Land title, unlike title to property such as a car, can be divided into many parts or interests that may be owned by different people. When DNR sells land, it always reserves or keeps the mineral rights (including the right of access to the minerals) and often reserves public access easements, utility easements, or both. These easements are either retained in DNR's management, transferred to DOTPF, or transferred to local government. If kept by DNR, the easements are managed under AS 38 and laws such as AS 38.04.058 apply to them.
10	Is the easement the dominant or subservient estate?	The land crossed by or subject to the easement can legally be termed the "servient estate." However, the proposed regulations replace this legal term with plain English. Also, land status is usually more complicated than these terms would suggest. If an easement reaches and then crosses a parcel, the parcel is both subject to and benefited by that easement.
10	Who has ultimate management authority over the surface estate of patented private land subject to an access easement? Can landowners manage the land as they see fit?	Landowners do not have the right to interfere with public access along the easement, and are subject to any other applicable deed restrictions or reservations. These "valid existing rights" are "senior" to (that is, they came before) the landowner's title. General laws and local zoning may also affect what landowners can do. But except for the above, landowners can manage the land as they see fit.
10	Can the landowner fence or farm the unused part of an easement?	Detailed management rules will be addressed in Phase 2. As owner of the underlying land, the landowner can use the area subject to the easement to grow crops, cut hay, etc. DNR might even agree that the easement could be fenced, but gates would probably be required at both ends of the easement, and this wouldn't work if the easement is developed as a road. (Cattle guards might work.) If the easement only has a narrow trail, DNR might agree for the landowner to fence up to the trail, with the understanding that the fence would need to be moved if the trail is ever expanded into a road.
10	Define "access." Does it mean ingress/egress, or does it give the public to use my private land for recreation? If the former, what if the easement goes nowhere—dead-ends at private land or circles around a tract and returns to its starting point?	DNR agrees that access means ingress/egress, not stopping to use the private land itself for recreation, camping, berry-picking, hunting, trapping, etc., without the landowner's permission. Further detail will be worked out in Phase 2. An easement that goes nowhere would be very unusual, but would be a candidate for vacation. If the easement dead-ended at a private parcel, access to that parcel would still need to be provided, but could be a private easement.
10	In general, the proposal is a step toward more centralized power in state hands and a loss of power by private landowners and local communities. DNR should scrap it and start over after extensive discussion in	The legislature has already provided guidance in the form of new laws on RS 2477 rights-of-way and vacation of such rights-of-way. DNR is required to implement these new laws faithfully, even if affected landowners and local communities consider these

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	local communities. DNR does need new regulations, plus realistic guidance from the legislature.	legislative policies unrealistic or oppose them outright. Private landowners who believed they had the legal right to block public access on public easements across their land are simply mistaken as a matter of law. The law is unlikely to be changed.
10	The majority of the changes are somewhat ambiguous and unclear, with too much discretion given to the department. Abuse can occur by department employees in this situation.	In most of the proposed regulations, DNR's seemingly wide discretion is limited by the statutes that the regulations will implement. The legislature usually does not grant DNR unfettered powers (and DNR cannot grant powers to itself). Administrative regulations are not allowed to repeat or paraphrase state laws, but must always be read in the context of their statutory framework.
10	Public easements should include a path near King Salmon that we have used since the mid-1970's, and improved by lining it with WW II airstrip steel. Now the land has been bought by a foreigner who does not want us to use the path. We cause no problems or inconveniences.	The improvements may have happened too late to qualify under RS 2477 (the December 1968 "land freeze" withdrew all remaining federal land in Alaska), or the land may have already been privately owned in the 1970's. However, RS 2477 was not the only way to establish an easement based on use of a trail. By now there may be a prescriptive easement on this trail across private land. Depending on the facts and the law in a particular case, the courts will uphold prescriptive easements in Alaska.
10	I strongly oppose the proposed regulations for many reasons, starting with poor notification. Legislators I contacted did not know of the comment deadlines.	Every legislator received a personal copy of the proposed regulations in November 1999, as did the House and Senate Resource Committees, the House and Senate Transportation Committees, and the legislature's Administrative Regulation Review Committee.
10	It's not true that "This action is not expected to require an increased appropriation." Also, these regulations were prepared by a person whose spouse is employed by the Sierra Club.	DNR has had regulations on identifying RS 2477 rights-of-way since 1992. The proposed changes would eliminate certification and otherwise simplify the identification process, reducing budget outlays. Similarly, DNR has had regulations on managing RS 2477 rights-of-way since 1992 and has had permit regulations applicable to state-owned land and interests in land since 1970. The proposed regulations do not alter the status quo. Further, AS 19.30.400 specifies that RS 2477 rights-of-way are available for public use under DNR regulations unless DNR has transferred the rights-of-way to DOTPF. It costs money to manage public easements, just as it costs money to manage state land, but this is DNR's job according to legislative policy. DNR does not have the power to walk away from this task.
10	It's a mistake to use "easement" interchangeably with "right-of-way," especially when speaking of RS 2477 rights-of-way. This blurs the distinctions between the two terms. See "Clark on Surveying and Boundaries" or other authority.	Clark does not clearly distinguish between the two terms, stating "All easements are rights of way, but not all rights of way are easements," immediately followed by the reverse: "A right of way is a peculiar type of easement, being limited to use for passage only," and describing Alaska's section-line easements thus: "This type of easement is a right of way for a public highway, either 66 feet or 100 feet wide, [centered] on the section

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		line." Standard legal authorities recognize that a right-of-way is a class of easement, e.g. Bruce & Ely, "The Law of Easements & Licenses in Land." And AS 38 itself uses the terms interchangeably. Confusion arises because people sometimes use "right-of-way" to mean fee title to a strip of land, not just an access right, the latter being only a single interest in land ("one stick in the bundle of rights"). This is why DNR's proposed regulations prefer the term "easement." (An RS 2477 right-of-way is unquestionably an easement, not a narrow tract of land owned outright by the public, but the term has been in use for 134 years and it is too late to change it.)
10	Delete the implication of land ownership with regard to a public easement. (Is a "public easement" different from an "access easement"?)	Ownership of an easement is separate from ownership of "the land" (that is, ownership of the remaining interests in land). An easement is a property right, even though it is "only one stick in the bundle of rights." See 11 AAC 51.010, which attempts to clarify this. A public easement crossing private land is a public property right, but this does not mean or imply that the private land itself becomes public property. For instance, the landowner continues to own the timber rights. If trees must be cleared to build a trail, the landowner is entitled to the logs; the public cannot take them without the landowner's permission. (There can also be private access easements across public land, so an "access easement" is not necessarily a "public easement." However, DNR's proposed regulations deal only with public easements.)
10	The regulations should say that the size, character, or use of an existing easement cannot be changed, or that the private landowner should be compensated for loss of value.	It is true that DNR cannot change the size of an existing easement across private land. (The easement is the property right, not the access facility built on that easement. Typically the easement is wider than the trail or road that may be on it.) However, it is not within DNR's power to give up the state's right to make full use of its easements, or to make the state compensate private landowners for exercising that state-owned right.
10	This chapter should apply only to existing easements on private property, not create new ones.	The commenter is correct. DNR does not have the power to create new easements on private land. DNR manages only those easements it reserved before the land passed out of state ownership, and easements acquired by the state under RS 2477 along traditional trails and section lines. An RS 2477 right-of-way may have been recently rediscovered, but there is no such concept as a "newly created" RS 2477 right-of-way. The grant of the easement had to be accepted by official action or public use before the underlying land passed into private ownership. RS 2477 rights-of-way can't be "newer" than 1976; in Alaska they are unlikely to be newer than December 1968; and most date back to the 1930's, 1920's, or even earlier.
10	These regulations are reasonable and proper for public land being conveyed into	The commenter is absolutely correct that DNR cannot create a public easement if no easement was reserved

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	private ownership. When easements are clear at the time of purchase, there is no loss. When they are implemented after the fact, it amounts to a taking without due process.	before the land passed into private ownership. DNR's regulations deal only with easements reserved by the state, or granted TO the state in the case of RS 2477 rights-of-way, before the land passed out of public ownership. Easements reserved by DNR are clear at the time of sale: they are noted in DNR's disposal decisions and disposal brochures, listed in the affected deeds, and noted or shown on the survey plats. However, RS 2477 rights-of-way do not follow this pattern. Private landowners are understandably surprised to find that their property is subject to an RS 2477 right-of-way, but no "taking" is involved: to be valid, the RS 2477 right-of-way had to be created before the land passed into private hands.
10	I don't have a problem with public easements, but granting unrestricted public access to public easements on private land infringes on my property rights. If the state and borough charge taxes on my land, I ought to be able to control its use. If a snowmachiner is injured on my land, why should I be liable for damages? You protect yourself; why not the landowner? And why do I have to make sure the easement is clear of anything that would restrict access to it?	DNR's regulations deal only with public easements reserved before the land passed out of public ownership. If someone buys property subject to a public access easement, he or she must expect that the public will use the easement for access—that was the seller's intent in reserving that access right. The state does not charge taxes on land, but paying borough taxes on a parcel does not mean the landowner can prohibit the public from using public access easements, prohibit utility companies from installing utility lines on utility easements, etc. For liability, see 11 AAC 51.920, which seeks to protect the landowner on an equal basis with the state.
10	Consolidating all easement policies into one chapter will be an improvement for people looking into access issues.	DNR agrees.
10	Consolidating all easement policies into one chapter will be an improvement for people looking into access issues.	See above.
10	Limit easements on private property to future utility and road construction. The private landowner should be able to use the land as he sees fit. If the landowner can't use the land the state should buy it back.	Imposing such a restriction on public access easements would not be in the state's interest nor consistent with state law. For instance, see AS 38.04.055 and AS 38.05.127. These are public access laws, not highway-construction laws. The landowner has the right to use the land, so long as access isn't blocked.
10	I can understand keeping easements for road and utility installation, but that doesn't mean Joe Public has the right to come down it, cutting flowers, forgetting to close gates, or getting trampled by livestock.	The commenter is correct that the public has no right to take flowers (property of the landowner) or to unnecessarily interfere with the landowner's use of his property. However, he is incorrect in believing that a public access easement does not allow access by the general public. The very purpose of reserving a public access easement is to allow continued public access.
10	Sometimes trespassers establish trails on private land without the landowner's knowledge or permission.	If the trail is built in a public access easement, it is not a trespass. However, if someone tries to build a trail on someone else's private land where there is no easement, the landowner has the right to put a stop to it.
10	I believe easements are to preserve public access to lands beyond the property, not	DNR could not limit public access based on how important it considers the user's reasons. (Likely

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	arbitrary access for no reason. The landowner has primary management authority and the state cannot take that away with an easement.	everyone who travels along an easement has some reason for doing so.) As roads are developed to serve the more isolated tiers of private parcels, some public easements may become unnecessary and could be vacated altogether, or modified into narrower easements for a trail.
10	In various places, DNR refers to an RS 2477 "grant" being accepted. What is meant by this term?	"Grant" is a generic term meaning to convey a right to another party. The "grantee" is the party receiving the conveyance. RS 2477 was considered a standing offer by the U.S. Congress to grant highway rights-of-way on certain federal lands. When that standing offer was accepted, either by general public use of a trail or by an official act of a public authority, the grant was complete and the right-of-way came into existence. When the proposed regulations speak of easements reserved by DNR or "granted to the state," the second category refers to RS 2477 rights-of-way granted to the state.
10	RS 2477 rights-of-way are not like local subdivision easements. In fact the term "easements" is a poor substitute for the rights granted under RS 2477. "Right-of-way" indicates and conveys a far greater legal right.	Court decisions treat RS 2477 rights-of-way as easements (they sometimes call them "right-of-way easements"). DNR does not know of any court decision ruling that an RS 2477 right-of-way is a "right-of-way corridor" (representing a fee interest in a strip of land). But because the term "right-of-way" sometimes means "right-of-way corridor" (e.g. Parks Highway), DNR prefers the generic term "easement."
10	You are trying to tie up the lands in Alaska for prosperity. We support the Constitution: "The will of the people shall be served." We will not submit to the blade of your new "D 8" policies. Do not tie up or take from the public lands that have traditional or common use. We have zero tolerance concerning limitations on land use issues.	Comment noted.
15	If the easement is 100' wide, why does there need to be access across the whole width when the only development may be a narrow trail, or even a 30-foot-wide road?	Wide public access easements are reserved so that there is allowance for construction difficulties, plus room for different facilities or for future expansion. People have a right to travel through the whole width of the easement. However, if there is a developed trail at the centerline, they will almost surely stick to the trail. If the outer part of the easement is not needed for future road construction (or utility line installation, on a section-line easement or RS 2477 right-of-way), the landowner could ask for the easement to be modified or partially "vacated." But note that utility lines are typically required to be placed well away from the centerline of an access easement so that they do not interfere with future trail or road development.
15	DNR is the platting authority in the unorganized borough and in municipalities that do not have or exercise platting authority. What easements will be required when private land is subdivided? When will the subdivider be obligated to transfer	Platting regulations to implement the new statewide platting law (AS 40.15.300- 40.15.380) have now been officially adopted but are still undergoing legal review as of December 2000 and are not yet in effect. The adopted regulations can be viewed on DNR's website at www.dnr.state.ak.us/land/hb17pr.htm. When final, the

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	those easements to the state?	regulations will be placed in DNR's survey regulations, 11 AAC 53, rather than in 11 AAC 51. Briefly, they will ensure that each lot has dedicated access, including access for utilities. "Dedicating" an easement means that it passes out of the subdivider's private ownership into public ownership.
15	Form letter 2, comment 2: Utility easements are for the purpose of maintaining poles, lines, etc. This does not make them a pathway or roadway.	The commenter is absolutely correct. Some public access easements can also be used for utility installation (the Supreme Court has ruled that utility lines can be installed on unused section-line easements), but the opposite is not true: if an easement is listed as only a utility easement, it is not open to general public use. Only utility personnel would have access rights, and only to install and maintain the line.
15	I object to the state taking authority over easements across private property. This says if there is an existing trail across my property I must allow people to cross there at will, and would be liable if they get hurt. No way!	There seems to be a misunderstanding here. On private land that has no easement, DNR does not have the authority to impose an easement, regardless of whether there is an existing trail on it. (Public use of a trail can create a "prescriptive easement" on private land, or the state Department of Transportation could buy or condemn the route for a public road project, but neither of these actions is under DNR's control.) DNR has authority over an easement only if 1) DNR reserved the easement when it transferred state land into private ownership, or 2) it is an RS 2477 right-of-way that was established on federal land BEFORE the land passed into private ownership. For a discussion of liability, see 11 AAC 51.920.
15	Survey costs are prohibitive for a private person. Also, I believe RS 2477 rights-of-way should be 100 feet, not 60 feet, per federal Public Land Order.	See 11 AAC 51.100. It requires survey before DNR permits development of an easement (other than on DNR-managed land) whose location is uncertain. Survey costs are low compared to the cost of constructing a trail or road. A survey safeguards the property owner's rights and protects the road developer as well, helping to ensure that the road does not trespass off the easement. RS 2477 right-of-way widths are set by applicable laws, not by DNR's regulations. An RS 2477 right-of-way on a section line is 33 or 66 feet wide, depending on land status either side of the line. Public roads under the jurisdiction of the Territorial Board of Road Commissioners had 60-foot easements by territorial law (1917). Local roads under the Interior Department and withdrawn by PLO 601 in 1949 got 100-foot rights-of-way by DOI Order 2665 in 1951, but most RS 2477 rights-of-way do not fall in this category. If the road crossed land that was still unreserved, unappropriated federal domain in 1963, when AS 19.10.015 went into effect, the right-of-way is 100 feet. If the route is not in any of these categories, the width is determined by court decisions (caselaw) applicable while RS 2477 still applied to it.
15	The problem with utility easements is that they are typically 20 feet wide. Is the	There is a misconception here. The Alaska Supreme Court says utility lines can be placed on one type of

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	landowner liable if someone using such an easement damages a power pole, etc.? Recreational riders easily veer outside a 20-foot limit and cause damage, or may bring an animal onto the property causing mayhem. Result: Noise, pollution, reduced property values.	public access easement—unused section-line easements—but the reverse is not true: utility easements across private land do NOT include public access rights. A person using a utility easement for access, without the consent of the landowner, is trespassing. (Utility company personnel do have the right of necessary access to construct, check, or repair the line.) DNR agrees that 20 feet is too narrow for a multi-purpose easement that must accommodate both utility lines and public access. "Public access and utility easements" reserved by DNR are typically 50 or 60 feet wide.
15	RS 2477 rights-of-way should be included in paragraph (c)(6), which sets minimum widths for easements.	Sec. 015(c) sets standards for easements to be reserved by DNR before a land disposal, so RS 2477 rights-of-way do not "fit." DNR can't reserve or create new RS 2477 rights-of-way (RS 2477 was repealed in 1976 and was a federal law applicable only to federal land), nor make them wider than they already are. Applicable law sets their widths. An RS 2477 right-of-way that is a section-line easement is 33 feet on each side of the section line. An RS 2477 right-of-way that was created by road construction and use is 100 feet wide if the land was still open to RS 2477 in 1963 when AS 19.10.015 went into effect. If it wasn't, i.e. the land was already reserved or appropriated as a mining claim or homestead, earlier laws and court decisions apply.
15	Repair and maintenance of an existing trail or road is necessary and should not require a DNR permit. Clarify that this would not be considered an "improvement".	Repair and maintenance, without new construction, widening, etc., would not be considered an improvement. However, a permit might be required under existing regulations (11 AAC 96). Possible changes in this policy will be considered in Phase 2.
15	Repair and maintenance of an existing trail or road is necessary and should not require a DNR permit. Clarify that this would not be considered an "improvement".	See above.
15	RS 2477 rights-of-way should be included in paragraph (c)(6), which sets minimum widths for easements.	See above.
15	By requiring survey and platting before any improvements can be constructed, this will discourage improvement and prevent use of historic access routes. If private parties must pay for this, only those with plenty of money will be able to comply, especially on longer routes. If DNR intends to pay for it, it may also be an insurmountable problem, as it has not surveyed many already established routes.	11 AAC 51.015 has been modified simply to cross-reference 11 AAC 51.100, which does not require survey if the easement crosses land subject to AS 38 (ordinary state land) nor if its location can readily be determined and there is no dispute whose land it crosses. DNR recognizes that surveying adds to the cost of road construction. However, the rights of the landowner must also be considered. Landowners would be outraged if they found a road being constructed on an easement they did not even know existed, and the courts would probably consider this situation a denial of due process (unconstitutional). DNR needs a way to notify the landowner before authorizing road construction, and must know whose land the easement

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		crosses in order to give that notice. In most cases, a survey is the only way to determine which properties are subject to the easement. It is a fact of life that RS 2477 rights-of-way were established to reach settlements, mines, and other development sites, areas that eventually became private land. The original homesteaders and mining claimants undoubtedly knew about the RS 2477 right-of-way, but current owners might not, especially if the route has not been used recently and is now overgrown.
15	If the state intends to grant everyone access along all private property boundaries, it should retain full ownership of these corridors and compensate all landowners for the "taking" that occurs in this proposal.	DNR's regulations deal only with existing easements and with easements DNR will reserve in the future on state land being prepared for sale. If there is no existing public easement along a private parcel's boundaries, DNR has no power to allow access there. But if the private land does have a public easement along its boundary, public access rights already exist. The commenter is incorrect in believing that DNR's regulations change or expand the nature of a public easement. They don't; the concept of public easements has been established in Western law for literally hundreds of years. A land purchaser who believes that the public access easement is under his private control, to be used only with his permission or only for future highway construction, is simply mistaken. No "taking" occurs because the private landowner never owned that public access right to begin with.
15	The proposed regulations infringe on private property rights. This regulation says the state retains ownership of all public easements. I bought land from the state. How can they sell it to me yet retain ownership?	The commenter did not purchase nor pay for all interests in land. As required by law, the state reserved the mineral rights (including the right of access to minerals) as well as specific public access and utility rights.
15	The land may be deeded private land. Since the easement can't be separated from the land, DNR is taking over full management control of the land.	This is a misconception. The landowner retains all rights other than the right to prevent public access. As the landowner, he can cut all the timber within the easement, graze his cows there, use it for his leachfield, cut hay off it, pick berries on it, place his own driveway and utility lines on it, or landscape it, for example. (But he can't develop the minerals if they were "reserved" or excluded from his land title.)
15	AS 38.05.035 doesn't give DNR authority over private land, but only over state land.	Legally speaking, state land refers not only to land owned "in fee" (lock, stock and barrel) by the state, but also to individual "interests" (individual property rights) owned by the state. For instance, where the state has sold the land without keeping an easement, reserving only the mineral rights, the Supreme Court has determined the property is "state land" for purposes of mineral development under AS 38.
15	I believe that public easements do not protect an individual's arbitrary access when there is no demonstrated need or there is an effective alternative. The state	Access easements have a very long and well-established history in Western law. DNR does not know of any statute or court decision supporting the commenter's belief that a member of the public can be

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	has no authority to take away any of the landowner's control of the property. The legislature's intent, quoted under AS 38.04.058, is that "nothing in this Act affects private property owners' rights that exist on September 2, 1997." These regulations will seriously erode those rights.	forbidden to use a public access easement unless the person demonstrates a "need" to do so or there is no other way to reach his destination. A landowner who buys property subject to a public access easement cannot legally control or prevent public access, just as a landowner who buys property with the mineral rights reserved cannot control or prevent mineral development. The legislative intent quoted under AS 38.04.058 (and AS 38.04.200, to which it is more relevant) does not change this basic fact of land law. The public easements on the property this commenter owns were reserved and platted on survey plat ASLS 78-93 before DNR originally offered the land for sale in 1978. The purchaser never had the "right" to control public access along those easements.
15	Is an easement the piece of paper or the land governed by the easement?	Strictly speaking, neither is true. The easement is the interest in land (a single property right in the "bundle of sticks" that together make up the land title) that gives the right of public passage or the right to install utilities.
15	In subsection (c), what constitutes "special conditions" that would allow a right-of-way for an existing road to be other than 60 feet wide? Many roads that might have RS 2477 easements have a constructed width of no more than 10 to 15 feet. This might not be an issue on state land but certainly is on private land. A 100-foot easement across a five-acre aliquot-part parcel takes up 3/4 of an acre; running the long way, it takes up 1.5 acres. If the lot is smaller, the "taking" is even greater.	Subsection (c) does not apply to RS 2477 rights-of-way, but only to easements DNR reserves before it sells land. The width of an RS 2477 right-of-way was set by applicable law while RS 2477 still applied to it, not by DNR's regulations. For instance, for roads under the jurisdiction of the Territorial Board of Road Commissioners, a territorial law set the easement width at 60 feet in 1917. For an RS 2477 right-of-way established solely by public user, rather than by the Alaska Road Commission or other public authority, a 1938 court decision (*Clark v. Taylor*) ruled that the width depended on the character and extent of the user. However, if the land crossed by such a trail or road was still unappropriated, unreserved federal land in 1963 when AS 19.10.015 went into effect, DNR's interpretation is that the easement expanded to a width of 100 feet. If the easement is much wider than the existing road and there is no foreseeable need to expand the road or install other access facilities along it, an affected landowner could ask for the excess width to be vacated under 11 AAC 51.065.
20	It is important to get rid of the "certification" process for RS 2477 rights-of-way.	DNR agrees.
20	The public should have the opportunity to nominate an RS 2477 right-of-way without having to pay an application fee.	DNR agrees. That is why DNR decided to repeal the fee formerly required by 11 AAC 05, and to drop the formal application requirement from 11 AAC 51.020.
20	It is important to get rid of the "certification" process for RS 2477 rights-of-way.	See above.
20	It is appropriate to drop the costly, cumbersome process of nomination and certification of RS 2477 rights-of-way.	DNR agrees. Also, the legislature's policy on identifying RS 2477 rights-of-way, which went into effect several years after the nomination and certification regulations, made no mention of those steps. The hearing record shows that the legislature was aware of DNR's regulations and thought the certification process was too

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		slow.
25	In other states, the public does not have the right to use a section-line easement until the governing body decides a "highway" is needed and serves notice on the landowner. Why has Alaska circumvented the private property rights granted to other states' citizens?	It would be highly unusual for access easements to be closed to public use until government officials construct a highway. DNR does not know of any state using such a system, but it would not seem feasible unless the state already had a fully developed network of roads and railroads and no remaining public land to reach. Alaska is not in that status. If such a restrictive system were in place here, it would not only hamper access to public lands and resources, it would damage private property rights. Many landowners rely on informal roads or ORV trails on section-line easements to reach their property. They cannot be forced to wait for access until the government builds a major highway. (Alaska law defines "highway" very broadly, including a "trail" or "walk", and it does not matter who constructed it. AS 19.45.001(9).)
25	Form letter 2, comment 3: Section lines do not constitute a trail.	Under Alaska law, section-line easements may be used for trails. AS 19.10.010 reserves section-line easements for "highway" purposes. AS 19.45.001(9) defines "highway" to include not only highways but trails and walks.
25	The proposal is misleading, because it implies that there is a statutory basis for combining regulations on RS 2477 rights-of-way with regulations on section-line easements. This is not the case. These are two very distinct issues, with different history. A section-line easement may never have been used for access. If the proposed regulations are implemented, the result will be costly litigation.	Although it may not be common knowledge, all 66-foot-wide section-line easements are RS 2477 rights-of-way, and some 100-foot-wide section-line easements have 66-foot-wide RS 2477 easements "inside" them. RS 2477 rights-of-way could be accepted by two different ways: by a positive act of a public authority, which is how all section-line easements and some trail easements were accepted, or by public user, which is how other trail easements were accepted. Regardless of whether the RS 2477 right-of-way lies along a section line or a historic trail, the RS 2477 grant could be accepted only on unreserved, unappropriated federal land; it could be accepted only until December 1968, when all federal land in Alaska was reserved by PLO 4582, the "land freeze;" its management is subject to AS 19.30.400; AS 19.30.410 governs its vacation by a state agency; AS 29.35.090 prohibits its vacation by a municipality; and AS 19.45.001(9) defines its range of uses from a walkway to a primary highway. Whether it is currently used for access does not affect the public's legal right to use it for access.
25	Is DNR claiming RS 2477 rights-of-way along section lines on federal land that was "unreserved" at some point from 1866 to 1976, i.e. on most federal land in Alaska?	This regulation does assert an RS 2477 right-of-way along section lines that were surveyed while the land was open to RS 2477. Most federal land was not surveyed before being reserved or appropriated under the public land laws and mining laws.
25	On state land a section line must be surveyed and monumented before it can have a section-line easement. This has been the rule of surveyors for years and should not be changed; it will stand up in	This comment raises two separate issues. 1) DNR agrees that an existing easement whose location is uncertain needs to be surveyed prior to development. Survey helps to ensure that the trail construction, utility installation, etc., will not accidentally stray off the

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	court. The easement is "there," but must be surveyed before it can be used.	easement, trespassing against the landowner's property rights. 11 AAC 51.100 places this long-standing DNR policy in DNR's regulations for the first time. 2) DNR recognizes that surveyors typically believe that a section-line easement does not "attach" unless and until the section line is surveyed. DNR agrees that this conservative view is appropriate if the land was never state-owned. On such land, 11 AAC 51.025 asserts a section-line easement only if the land was surveyed while still open to RS 2477. But on state-owned land, DNR's land sale regulations as early as 1960 gave notice that the state would reserve a section-line easement, and its land sale decisions and land offering brochures in later years repeated this intention. This gave fair notice to those who staked state open-to-entry sites, remote parcels, and homesteads that their parcels would be subject to section-line easements; it was also a commitment to those stakers that section-line easements would be available for their access.
25	I do not want to lose my farm because of the proposed easement regulations. I am appalled the state would even consider the proposed change to section line easements with change of responsibility from the state to individuals. This means that I cannot even comply with federally proposed soil conservation efforts such as ditches and waterways.	The commenter's state patent (deed) specifically lists the section-line easements, as well as other public access and utility easements, to which the parcel is subject. However, the commenter misunderstands the regulations. DNR does not and could not propose to change the nature of a section-line easement. Section-line easements are legally open to public use. That was true before the commenter bought his farm from the state, and it still is, as clearly set out in state law and state court decisions. As for liability, the intent of 11 AAC 51.920 is to protect the commenter against it, not transfer responsibility to him: he and his wife are the "grantees" (owners) of the land. When planning soil conservation measures or improvements, the landowner must keep the easements in mind so that these measures do not obstruct access. If it is impossible to avoid the easement, the landowner could petition to relocate or vacate it.
25	The regulations should clarify that access along section lines is only for access to adjacent property, not for unrestricted public access.	DNR cannot establish such a policy because it would not be lawful, just as a town could not declare that its sidewalks are only for the use of the adjacent property owners. Section-line easements are open to access by the general public, regardless of whether they own adjacent property. Of course, this does not mean that the general public has a right to step off the easement without the private landowner's permission.
25	The state demands that the private landowner allow access on section-line easements across private property, yet makes the private property owner assume all liability. This means I cannot prevent trespass on my private property and makes me liable for any harm the public incurs.	The purpose of a section-line easement is to allow public access. By reserving the easement before the land passed into private ownership, the state retained the right to allow that use. State law is clear: The property owner never had the right to block public use of the easement. See *Anderson v. Edwards*, for example. For liability, see 11 AAC 51.920, which protects the landowner (the "grantee"). AS 09.65.200 also provides

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		some protection if the injury was caused by a "natural condition" on "unimproved land," which is defined to include a trail. Also, AS 19.30.420 establishes that someone using an RS 2477 right-of-way (which includes 66-foot-wide section-line easements, and sometimes the inner portion of a 100-foot-wide section-line easement) does so at his or her own risk. Finally, no type of public access easement prevents the landowner from posting property outside the easement against trespass. The existence of a public easement does not give the public the right to set foot outside that easement without the landowner's permission.
25	If the state demands that the public have access to section-line easements on private property, the state needs to give the property owner the same privilege against liability that the state enjoys.	See 11 AAC 51.920, protecting the "grantee" (the landowner) just as it does the state.
25	The state has forced public access on private property, thereby denying use of the property by the landowner and preventing control of trespass. If the property owner cannot control or use his property, he should have no tax liability for it; in effect he doesn't own it.	Section-line easements, like all other easements covered by the proposed regulations, are always reserved before the land passes out of public ownership. A buyer who prefers not to deal with section-line easements should avoid purchasing property adjacent to a section line. However, a person who is already in this situation need not feel that the section-line easement makes his property unusable. As the landowner, he can cut the timber within the easement, graze his cows there, use it for his leachfield, place his own driveway and utility lines on it, or landscape it. He can't build his house on the easement, but that should not make the lot unusable unless it is extremely small. Taxation of real estate is by local government rather than the state. However, a landowner who can show that an easement significantly reduces the value of his property should make that information known to the borough tax assessor. (When the state sells land subject to an easement, the appraiser takes the easement into account in establishing the land's value.)
25	Our property has section-line easements on two sides. Potential snowmachine trails are being mapped in the Matanuska-Susitna Borough to use such easements across private land. Unless fenced and posted, something we don't want to do, these corridors invite trespass. This is a burden on the landowner. And there are no ORV laws except registration—no age limits, training, inspection, licensing, or insurance requirements—to protect the landowner.	DNR sympathizes with the landowner's concerns, but by definition, the public has a right to use public access easements. Since 1970 DNR has had regulations covering public access on state land. Because "state land" legally includes land where the state owns only an interest, such as an easement or the mineral rights, these regulations apply to the extent of the interest (i.e., if the state owns only an access easement, only the access-related rules apply; if the state owns only the minerals, only the mineral-related rules apply). These regulations allow use of off-road vehicles, up to and including pickup trucks, for access. Possibly DNR should set different rules for ORV use in settled residential subdivisions with small lots; this option should be considered in Phase 2. However, enforcement could be problematical as DNR does not

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		have law-enforcement powers (except within state parks). Nor does DNR have any way to impose speed limits, licensing requirements, etc. Local government—which does have law enforcement powers—could also take a role in governing ORV use that creates problems in residential areas.
25	Based on 25 years as a right-of-way agent, I feel you should exclude section-line easements from the proposal. Also, utility corridors, as with road access, should be planned and reserved on state lands between all communities. Developing with planned access creates many hardships. Planning individually and statewide is in everyone's interests. I would be happy to serve on such a planning committee.	The commenter did not explain why section-line easements should be excluded. AS 19.30.400 states that RS 2477 rights-of-way (which includes some section-line easements) are available for public use under DNR's regulations, so DNR would not have the option to exclude these section-line easements from its regulations. The commenter is right that a preplanned utility corridor linking communities might provide a more direct route with lower impacts than by using section-line easements, but acquisition costs could be very high. In most cases DNR no longer has, or never had, continuous tracts of land near communities. Even if originally state-owned, land near communities has mostly been conveyed to municipalities, private landowners, the mental health trust, or the University of Alaska. DNR no longer has jurisdiction over such land unless it reserved an easement across it before the conveyance took place.
25	Public access to state and federal land is fine, but not if you are trying to make my power line and section line a public easement. We bought this land for the privacy, yet snowmachiners, four-wheelers and horseback riders think they own the place. Few private landowners favor this; it's just a way for DNR to open up state and federal land to resource development without dealing with the public, leaving nearby property owners holding the bag. Look at Big Lake where sand and gravel pits are not required to reclaim. Do a better job overall, and next time your proposed changes will be better received.	When DNR conveys land out of state ownership, it must protect access so that the new landowners can get to their parcels and the public can reach the remaining tracts of state land beyond them. Public access can be protected only two ways: by easements or by keeping corridors of land in state ownership. In most cases, DNR reserves easements for this purpose instead of keeping corridors of state land. A person who buys land subject to a public easement should assume that sooner or later people will begin to use their right of access. However, the public has no right to set foot off the easement without the landowner's permission, nor does the public have any access rights on an easement reserved only for utility installation. The commenter is correct that public access includes use by companies developing natural resources nearby. Note that state law does require reclamation of gravel pits mined since Oct. 14, 1991.
25	Unrestricted access encourages those crazy snowmachiners to trash my property. They jump my driveway at 40 mph; a teenager was killed by someone going too fast after visiting a bar. There's a 90-foot right-of-way on Pittman Road and it is crazy to allow unrestricted use. Also, there is a powerline across my property and I don't want nuts using it to harass my livestock or doing anything annoying or illegal.	DNR does not manage the Pittman Road right-of-way, which is probably under the borough's or DOTPF's jurisdiction. The stretch of road in question is west of but not on the section line, and DNR never owned the land on either side of the line. If there is an easement along the section line—DNR does not assert such an easement on land never owned by the state unless the section line was surveyed while still open to RS 2477—it would be 66 feet wide, narrower than the Pittman Road right-of-way. As for the powerline, an easement limited to utility purposes is not available for access by the

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		general public. However, DNR's regulations do not apply to it because DNR never owned this property and did not reserve the easement.
30	Eliminating the certification process would let DNR record RS 2477 routes that are unsurveyed and undocumented. Standard practices of research and supporting evidence would not be used. Please reinstate a certification process that verifies the historical character and existence of an RST.	The certification regulations said nothing about survey, probably their greatest flaw. They assumed that DNR would somehow determine who owned the land, so that DNR could notify that person about a proposed certification. But without a survey that ties the location of the easement to property boundaries, it is usually impossible to determine whose land it crosses. (See further discussion of the survey requirement under 11 AAC 51.100.) The standard for verifying the historical character and existence of an RS 2477 right-of-way—to show that it was accepted by public use or by a positive act of a public authority, during a time when the land was open to the operation of RS 2477—is the same under 11 AAC 51.055 as under the former 11 AAC 51.060. DNR decided to repeal the data requirements of 11 AAC 51.020 because they proved unrealistic: they applied to the applicant (nominator), not to DNR, but private individuals could not meet their standard and DNR's researchers have always had to fill in the gaps. As promised in 11 AAC 51.055, DNR's identification will continue to be based on this research into reliable historical documentation and personal knowledge of a route's historic use.
35	Disagree with using the 50-foot width criterion to determine navigable waters. The state must not give up control of its waters—the Feds have already taken control of fishing, and this rule will give up more land to them. In all of the state's offerings of open-to-entry sites, remote parcels, and homesteads, DNR reserved easements on all water bodies, no matter how small. If a stream can be used by a jet boat, you should consider it navigable. Look at the Little Chena: less than 50' wide but very deep; it's navigable.	1) The term "navigable waters" has several other definitions for different purposes: navigability for title purposes, regulatory jurisdiction for control of water pollution, etc. This regulation does not deal with those other definitions, but only with "navigable waters" as defined by Title 38. The Title 38 definition is broad, but it applies only to state-owned beds of water bodies, and only for purposes of reserving access when DNR sells land along those water bodies. Regardless of how DNR's regulations interpret and apply this definition, DNR's regulations cannot possibly cause a waterway to pass from state to federal ownership, or give the federal government control over it. The federal government asserts control over subsistence fishing based on a concept in water law called "federal reserved water rights," which is also unrelated to DNR's easement regulations. 2) DNR clarified 11 AAC 51.035 to say that waterways will be considered navigable waters, and therefore retained in state ownership, if they are at least 50' wide or are known to be navigable in fact for any useful public purpose (the Little Chena River would be considered navigable under this criterion). If it is not wide enough or usable enough to qualify as navigable, it will still be considered "public" if it is at least 10' wide. The bed of such non-navigable waterways can be conveyed into private ownership, but access will be protected by reserving an easement on the bed. And "public" as well as "navigable" waters will continue to

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		have easements reserved along their banks and easements leading to them from nearby roads, just as DNR did in the past for the OTE, remote parcel, and homestead programs.
35	Please consolidate all the various definitions of "navigable water" used by state agencies. Note that there is historical nautical meaning to "navigable."	Unfortunately, DNR does not have the power to do this because the various definitions come from different legal sources aimed at different purposes. 11 AAC 51.035 deals with navigable (and public) waters only for access purposes. It is based on AS 38.05.127, a state law requiring that access to such waters be protected when DNR sells state land. In turn, that law is based on a state constitutional provision guaranteeing "free access to the navigable or public waters of the State, as defined by the legislature...." As keeper of state land title records, DNR also deals with "navigability for title." The narrower definition of "navigability for title" is set not by DNR, nor by state law, but by federal court decisions.
45	We support the proposed changes. Protecting access grows increasingly important as public land passes into private ownership. The 50-foot easement along waterways is desirable. In some cases, access has already been lost through title transfers. When possible, these access rights should be restored. People could then rely on a standard easement along any waterway, without having to research whether there is one or how wide it is.	Before 1976, state land subdivisions and open-to-entry staking programs usually did not reserve access to streams and lakes. In response, the 1976 legislature passed 38.05.127 requiring DNR to reserve easements in any state land conveyance to allow access to public waters. Most state land transfers into private or municipal ownership have taken place since this law went into effect. Land acquired from the state after 1976 almost always has access easements of standard width along its streams and lakes. However, this is not true of private land acquired from the federal government. It may have no easements (typical homesteads or Native allotments), or narrow easements only to "major" waterways on land conveyed to Native corporations (see federal regulation 43 CFR 2650.4-7). This complex situation means that land status and legal access must be researched before crossing private land to get to a stream.
45	Beach access as in the existing 11 AAC 53.330 is important. Why do you want to give up the easement 50' seaward of the mean high tide line? That's a 50% loss.	11 AAC 51.045 states there will be an easement along the mean high tide line, regardless of whether the proposed sale or lease parcel is uplands or tidelands. If the parcel to be leased or conveyed consists of uplands, it will be made subject to an easement reserved on the upland side of the mean high tide line. But in this case there is no point in reserving an easement on the seaward side, where the tidelands will remain freely available to the public. If the parcel to be leased or conveyed is tidelands only, it will be made subject to an easement reserved on the tideland side of the line. However, in this case no easement is needed on the upland side, which will remain freely available to the public (assuming it is in public ownership). If the proposed lease or conveyance includes land on both sides of the mean high tide line, DNR will reserve an easement on each side of the mean high tide line (for a total width of at least 100'). Also, the public normally has

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		the right to use any portion of the beach below the mean high tide line for hiking, fishing, boating, etc., because of the Public Trust Doctrine.
45	If there is an existing trail, it's there for a good reason. In the Petersville Subdivision (ASLS 80-144) the trail to Jake Lake has been used for over 60 years and is shown on the subdivision plat as an easement, yet a landowner has now fenced it off. Luckily no one has been injured.	The survey plat has an unusual plat note that makes the status of the trail uncertain. It does not indicate that it is on an easement reserved by DNR under AS 38.05.127, nor does its size—20 feet—match the normal width of such an easement. Moreover, the plat note states that the trail was identified by the Mat-Su Borough platting authority (rather than being reserved by DNR under AS 38.05.127) and that the easement will "automatically" be vacated when alternative physical access is provided. Because it does not state by whom or where this access would be provided, nor whether that access would need to be protected by an easement, it is not clear whether the "automatic" vacation has happened. Fortunately, this situation is not typical.
45	Public easements are extremely important. Last May my sons overturned their raft in Peters Creek. Although very cold, they got the raft to shore where there is a heavily used trail. Then a nearby property owner drove them off at gunpoint! Beaches should be public domain everywhere in the state.	DNR agrees with the importance of public easements. Unfortunately, the federal government did not reserve easements to and along streams in the homesteading era. In its land transfers to Native corporations, the federal government reserves easements only at periodic points along major waterways. DNR itself, in the early years of the state land disposal program, did not reserve easements to and along public waters. That changed in 1976, when the legislature passed AS 38.05.127 to require such easements.
55	Simply giving public notice and allowing public comment would be enough to record unsurveyed RST's. DNR does not even require itself to address the comments received, and only a limited appeal is available.	The regulations do not require or mention recordation. Existing law requires recordation of the 602 routes listed in AS 19.30.400 (see sec. 3, Ch. 26, SLA 1998). However, that requirement does not apply to newly identified routes DNR reports to the legislature under 11 AAC 51.055. The regulation has been clarified to state DNR will address the comments received as part of its final decision, and no longer limits appeal rights to those who commented. (However, DNR proposes to add this option to its general appeal regulations.)
55	Letting DNR record unauthenticated easements will harm the property owner, with little to no recourse, as well as adversely affecting natural resources and wildlife habitat. Please expressly prohibit the recordation of unsubstantiated RS 2477 routes.	The proposed regulations do not deal with recordation. DNR has always opposed recordation of routes whose location is uncertain, because it may cloud the title of landowners whose parcels are not actually crossed by the easement. However, DNR cannot prohibit recordation because existing state law (see sec. 3, Ch. 26, SLA 1998) already requires it for the 602 routes listed in AS 19.30.400. Regulations cannot overrule state statutes.
55	This identification process does not incorporate standardized methods to verify the historic right-of-way. There must be an unbiased method for identifying routes that have not been used since the early 1900's and have no remaining physical evidence.	DNR did not intend to depart from the existing standard of 11 AAC 51.020(b) and (c) and apologizes that this was not clear. DNR will continue to identify routes based on reliable historical accounts or information supplied by persons knowledgeable of the route's historical use. This requirement has been added to 11 AAC 51.055 as something that DNR, rather than a nominator, must do.

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55	Form letter 2, comment 5: RS 2477 trails are being pushed to make trespassing on private property legal.	If the easement is valid, public use is legitimate. It is not trespass, so long as people do not stray off the boundaries of the easement.
55	Form letter 2, comment 1: Big Lake property owners are opposed to the RS 2477 legislation, which is confiscation without compensation. It forces property owners into litigation to protect their property. Title companies issued clear titles in good faith, having found no recorded easements. Recording them now will cloud titles and make resale difficult or impossible, causing great hardship.	DNR has always opposed recordation of routes whose location is uncertain, because they may cloud the title of landowners whose parcels are not actually crossed by the easement. DNR's regulations do not deal with recordation. However, existing state law requires recordation of the 602 routes listed in AS 19.30.400. (See sec. 3, Ch. 26, SLA 1998.) Note that if a valid RS 2477 right-of-way does cross a given parcel of land, it is not a "taking" or "confiscation" to assert it or record it. It is a "valid existing right" that came into existence before the landowner received title. RS 2477 rights-of-way could only be created on unreserved, unappropriated federal land. Constructing a road did not create an RS 2477 right-of-way if the land was already part of someone's homestead or mining location.
55	Form letter 2, comments 1-5.	See detailed responses under this section, 11 AAC 51.015, 11 AAC 51.025, and 11 AAC 51.920.
55	Form letter 2, comments 1-5.	See detailed responses under this section, 11 AAC 51.015, 11 AAC 51.025, and 11 AAC 51.920.
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55	Form letter 2, comments 1-5.	See detailed responses under this section, 11 AAC 51.015, 11 AAC 51.025, and 11 AAC 51.920.
55	A claimed RS 2477 right-of-way over federal land may be barred as untimely by the federal Quiet Title Act, 28 USC sec. 2409a.	The courts have not yet ruled on this question.
55	Subsection (f) grants the department the right to manage a listed RS 2477 right-of-way and should cross-reference the management provisions of sec. 200.	In Phase 2, when the management provisions of secs. 200-210 are worked out, a cross-reference could be added. Note that it is AS 19.30.400(a) rather than the proposed regulations that places a listed right-of-way

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		under DNR's management (unless DNR transfers the route to DOTPF).
55	The section does not acknowledge that on state, municipal, and private land, the extent of public use that established the RS 2477 governs its width, intensity of use, and seasonality of use. These management issues will have to be dealt with by DNR, and the landowner will have to be compensated if the trail is broadened beyond its historical size and season to accommodate new uses and vehicle types.	The department does not agree with this analysis. DNR's position is that an easement granted for highway purposes may be used for any access facility within the definition of a "highway" at AS 19.45.001(9), and that if it was still open to RS 2477 (i.e., it was still unreserved, unappropriated federal public domain land) in 1963 when AS 19.10.015 went into effect, its width is 100 feet per that statute.
55	This section does not recognize that between March 27, 1934 and January 4, 1959, creation of an RS 2477 right-of-way by public user was prohibited by 48 USC 1489.	48 USC 1489 prohibited adverse possession or prescription against the federal government's land title in U.S. territories. (A similar law, AS 38.95.010, protects state land.) But because RS 2477 was Congress's standing offer to grant a right-of-way, accepting that offer by constructing a highway could not qualify as "adverse possession." DNR does not know of any court decision finding a conflict between RS 2477 and 48 USC 1489.
55	This section does not recognize that an RS 2477 right-of-way cannot be claimed based on use after RS 2477 was repealed (1976) or after PLO 4582 was issued (Dec. 14, 1968). The section-line easement regulation acknowledges this fact and this one should do so as well.	The commenter is correct that acceptance had to happen while the land was open to RS 2477. The regulation was revised to refer to acceptance "under RS 2477" in several places. Obviously a grant could not be accepted under RS 2477 after the statute was repealed, or on land no longer subject to it.
55	The regulations fail to recognize the paramount authority of the US to determine management and use of federal land where the state believes there is an RS 2477 right-of-way. See *United States v. Vogler*; *Alexander v. Block*.	The regulations express the department's position on RS 2477 right-of-way assertion and management, without regard to current ownership of the land. DNR does not necessarily assert exclusive jurisdiction over such historic trails and section-line easements, but ultimately the courts must decide jurisdictional questions just as they must ultimately determine whether a valid right-of-way exists.
55	The appeal provisions in (d) can't legally be conclusive against the United States, nor are they the only way for the US to appeal the identification or reporting of a claimed RS 2477 right-of-way.	DNR does not take a position on this question.
55	The court decision in *Eastham v. Price* shows that RS 2477 is a Pandora's box. Instead of ruling that the snowmachiners had a simple prescriptive easement, the judge decided on his own that the trail was an RS 2477 right-of-way. RS 2477 gives the State and the courts extreme license to take land from private landowners, if any usage can be claimed during the 1866-1976 "open season." DNR has barely begun to research RS 2477 on the Kenai	*Eastham v. Price* may not be typical. That Superior Court decision (not a Supreme Court decision) did not address land status, a crucial factor. Construction and use did not create an RS 2477 right-of-way on federal land that was either reserved or already appropriated by homesteads, mining claims, etc. Also, the typical seismic trail does not have "definite termini" or any particular destination, as the Alaska Supreme Court required in *Hamerly v. Denton*. However, the commenter is correct that the cat is now out of the bag. The courts may find their way to RS 2477 on their own,

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	Peninsula, where there are hundreds or thousands of pre-1976 paths and seismic trails. Any of these could be an RS 2477, and no title search will reveal it.	as in *Eastham v. Price*, or private individuals may lead them there, as in the Supreme Court's decision on *Fitzgerald v. Puddicombe*. (The state was not a party to either case.)
55	The State has eminent domain powers for major highways, and generally adequate access to private land via section-line easements. We don't need RS 2477 claims on historic trails to boot. DNR's proposed regulations will not help Alaskans. Eliminating certification will only speed up the claim process, letting DNR rule administratively on the claims with reduced public input. This is simply a "land grab."	DNR found that certification was too slow and costly to afford, and accomplished no real purpose. If a landowner disputes the existence of the easement, only the courts can resolve the conflict. DNR is the agency asserting the easement, and cannot also serve as the judge of its own case. On the other hand, if there is no dispute over the existence of the easement, certification is unnecessary. When the legislature passed AS 19.30.400 identifying 602 routes as RS 2477 rights-of-way, it was aware that DNR had completed certification on only 12 of them. It disregarded the distinction between certified and not-yet-certified routes and treated all 602 routes alike.
55	Are RS 2477 rights-of-way potential highways? Does public use of a footpath in 1900 make the route available for motorized travel now? If allowed uses were the same as the historic use, these rights-of-way would be far less threatening.	DNR's position is that RS 2477 rights-of-way were granted to the state, and section-line easements were reserved by the state, as easements for public highways. That was the stated purpose of RS 2477 and AS 19.10.010. State law defines "highway" very broadly at AS 19.45.001(9), reaching from a walkway to a primary highway. State law also sets the width of a public highway at a minimum of 100' (AS 19.10.015, passed in 1963). That is the basis for DNR's position that RS 2477 rights-of-way along historic trails are 100' wide if the land they cross was still unappropriated, unreserved federal land in 1963. DNR understands landowners' fears that a footpath will be improved into a primary highway (although this is statistically unlikely), ORV trail, or cat trail. 11 AAC 51.100 requires a public notice and comment period before DNR authorizes construction that would change the use of the trail. However, DNR cannot make a general rule or regulation saying that RS 2477 easements cannot be converted from footpaths to primary highways. Only the legislature could make that policy, just as only the legislature could exempt RS 2477 rights-of-way on historic trails from the 100' width standard of AS 19.10.015.
55	By eliminating certification, the proposed changes eliminate the consultation with local government that should be part of an informed decision on a proposed right-of-way and its impact on the surrounding community, as in the existing section 30.	The certification regulations (11 AAC 51.020, 030, 040, and 060) did not call on DNR to consult with local government or to consider the impacts caused by the right-of-way. If DNR were truly proposing a right-of-way, it would take both of these actions and more. But determining whether an RS 2477 right-of-way is valid does not involve any proposal or discretionary decision by DNR. Whether the RS 2477 grant was accepted is a factual matter, based on historic records of construction and use as well as land status during a specific period. If it is valid, it is a state-owned property right and DNR must assert and defend the state's title to it. The next question is how that right-of-way will be managed and

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		developed, modified, or even vacated. At that management stage, consultation with local government and consideration of impacts are essential.
55	The regulation does not clearly define what constitutes sufficient public use to qualify as an RS 2477. Does it mean just one trip by a group, as with the King's County Trail south of Kenai (RST 405), used once by an expedition in 1896? Or several years' use? Without a definition, this is a blank check.	RST 405 is an atypical trail, but the commenter is right that the regulation does not quantify "sufficient use." This is because DNR does not have the power to decide what did or did not qualify as a public highway under RS 2477. Only the courts can make these rulings, and state courts are only beginning to fill in this picture. However, the Alaska Supreme Court in *Hamerly v. Denton* gave considerable guidance on this criterion, ruling against an existing road whose use was "…infrequent and sporadic….[Users] had no real interest in the lands to which it gave access…. merely sightseers, hunters and trappers. The road could not be considered as something that was either necessary or convenient for the accommodation of the public. Where there is a dead end road or trail, running into wild, unenclosed and uncultivated country, the desultory use thereof established by the evidence in this case does not create a public highway [under RS 2477]." After more court cases are decided, a pattern of interpretation may emerge that could then be shaped into a regulation. (Note that challenges to routes across federal land, such as RST 405, would take place in the federal courts, which may reach different conclusions than state courts. For instance, the Alaska Supreme Court ruled in *Fisher v. Golden Valley Electric Association* that section-line easements acquired under RS 2477 could be used for utility lines, whereas the federal Ninth Circuit ruled in *U.S. v. Gates of the Mountains Lakeshore Homes* that RS 2477 rights-of-way across federal land cannot be used for utility lines without a separate federal authorization.)
55	This section should state when the "open season" began for RS 2477 claims. Was it 1866, or when the 1923 Territorial Legislature passed what is now AS 19.10.010? If the latter, the King's County Trail would have no basis.	RS 2477 became law in 1866, after which a highway grant could be accepted either by a positive act of the proper public authorities, or by public user. *Hamerly v. Denton*. The eligibility period for section-line easements did not begin until 1923 because that is when the territorial legislature passed Alaska's first section-line easement law, but acceptance via public user along historic trails was already in full swing. For that matter, many highway grants were accepted by public authorities long before 1923, by directing and funding trail construction.
55	This regulation says that local governments will not be able to vacate RS 2477's. Local communities should have this power, and certainly should be involved in certifying them.	One of the four new laws that necessitated changes in DNR's regulations is AS 29.35.090 (passed in 1999). This statute, not DNR's regulations, prohibits local governments from vacating RS 2477 rights-of-way. DNR cannot override this legislative policy, nor "lend" its vacation authority to municipalities. However, DNR agrees that municipal involvement in vacations is essential, and 11 AAC 51.065 finds a way to maintain

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		that involvement. Because a vacation also involves a plat change or "replat," this regulation requires the petition to be submitted to the platting process first. Existing state law on replats ensures that a public hearing, with notice to affected landowners, will take place (unless the platting authority declines to participate). This will result in much more effective local notice than DNR could provide on its own, as local governments have detailed records of private land ownership via their tax rolls.
55	Please sever the RS 2477 regulations from the rest of the package, holding them back until DNR explains why it never considered or applied any statute of limitations in asserting that RST 1467, the Herning Trail, crosses our property at Knik. It is fraudulent to proceed with regulations before resolving this matter.	DNR did not apply any statute of limitations to RST 1467 or any other RS 2477 right-of-way because it cannot lawfully do so. State law provides, "No prescription or statute of limitations runs against the title or interest of the state to land under the jurisdiction of the state. No title or interest to land under the jurisdiction of the state may be acquired by adverse possession or prescription, or in any other manner except by conveyance from the state." AS 38.95.010.
55	RS 2477 is an outrageous assault on private property. It was needed in the covered wagon days of western expansion, but it is unconscionable to resurrect this antiquated statute now. It can unjustly be used to turn a footpath into a snowmachine/ATV/light truck route, devaluing private land and impairing the owner's quality of life.	DNR sympathizes with the private landowner's fears about changed uses on an RS 2477 right-of-way. 11 AAC 51.100 requires a public notice and comment period before DNR authorizes construction that would change the use of a trail. However, DNR cannot make a general rule or regulation saying that RS 2477 easements cannot be converted from footpaths to motorized vehicle trails or to primary highways. Only the legislature could make that policy.
55	Form letter 1: Using RS 2477, the "powers that be" have found new ways to harass private property owners. Your proposed AS 19.30.400-420, if enacted, will irreparably damage my property and quality of life, allowing strangers to trespass on my land and exposing my family to possible vandalism and crime. I am totally opposed. Adding insult to injury, easement users will be able to hold me liable for any injury or accident, as DNR is somehow able to hold itself harmless, and I will have no recourse for any damage they cause.	AS 19.30.400-420 were enacted by the legislature in 1998 and are now law. They are statutes rather than regulations. As an administrative agency, DNR has no choice other than to carry out the legislature's instructions. DNR understands the fears of many landowners that an RS 2477 right-of-way may cross their property, and that the public will begin using it or change the way it is used. Whether the right-of-way is valid is a legal question that ultimately can only be resolved by the courts. If it is valid, how it is used is a management question. In Phase 2, DNR will again propose rules on managing such easements. As for liability, DNR's policy (see 11 AAC 51.920-930) is that the "grantee"—the landowner—is not liable for accidents that happen to easement users, and easement users are fully responsible for any damage they cause to the landowner. State law (AS 19.30.420) exempts both the state and local government from liability involving an RS 2477 right-of-way, and declares that use of such a right-of-way is at the user's own risk.
55	Form letter 1.	See detailed response under this section.
55	Form letter 1.	See detailed response under this section.
55	I understand the need for and personally use trail systems, but there are plenty of options for good trails without confiscating	In some cases—and portions of RST 278—may be an example, landowners could successfully petition to relocate an RS 2477 trail completely off their property

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	private property, e.g. RST 278 (Fairbanks-Chena Hot Springs trail). It is not the private landowner's responsibility to provide public recreational trails.	and onto state land (so long as the replacement trail meets the standard of AS 19.30.410; see 11 AAC 51.065). However, that will probably not be possible along the entire length of a trail, because the state is unlikely to have a corridor of unencumbered land running through an area of privately owned parcels. Note that asserting an RS 2477 right-of-way is not a confiscation or taking of private land. If the right-of-way is valid, that property interest passed from the federal government to the state at the moment the grant was accepted. It was not available for the federal government to convey to a private party.
55	I do not agree with giving the state the right to manage the following very old trails under RS 2477, some of which haven't been used in many years and that may cross my land: Chickaloon River, Chickaloon-Knik-Nelchina, Startup Lakes, Crooked Creek, and Belanger Pass.	These five routes are among the 602 listed in AS 19.30.400. This state law asserts that the listed routes have been accepted as RS 2477 rights-of-way. It requires DNR to manage the routes unless DNR has transferred them to DOTPF. DNR must implement this law; DNR's regulations do not have the power to change legislative policy. It is DNR's position (see 11 AAC 51.010) that a public easement continues to exist unless and until it is vacated. The fact that a trail has fallen into disuse, become overgrown, or been blocked by a landowner does not cause the easement to be lost or extinguished.
55	I am totally against the RS 2477 regulations until the trails have an exact location, liability is explained in plain English, and there is a one-year period for public participation.	Unfortunately, due to cost, it will probably be years before all RS 2477 trails are surveyed. However, 11 AAC 51.100 will ensure that major construction does not occur until the trail has been surveyed and the landowner has been notified. See 11 AAC 51.920 expressing DNR's policy that the landowner is not liable for accidents on an easement. DNR revised this regulation to replace the term "grantee" with "the owner or lessee of the land," as many people misunderstood the word "grantee." For RS 2477 rights-of-way, state law already protects the landowner by saying in plain English that travel is at the user's own risk. See AS 19.30.420.
55	I support the position expressed in the letter from the Matanuska-Susitna Borough regarding RS 2477 rights-of-way.	Comment noted. See this section for the Matanuska-Susitna Borough's comments and DNR's responses.
55	I strongly oppose these regulations, which would give the state broad powers over privately held land. If we can't halt trespassers and must bear all liability, why not apply it nationwide? Why not let dirt bikes cruise through the lobby of the Kansas City Hilton, where our forefathers had a trail long before the hotel was built? Absurd, but no more so that this.	DNR's regulations do not give the state authority over private land. This authority comes from the existence of a valid RS 2477 right-of-way, coupled with legislative policy in AS 19.30.400 that "The state claims, occupies, and possesses each right-of-way granted under [RS 2477]…. A right-of-way acquired under [RS 2477] is available for use by the public under regulations adopted by the Department of Natural Resources unless the right-of-way has been transferred ...to the Department of Transportation and Public Facilities…." The right to use a public easement does not include the ability to trespass off it. As for liability, state law also says that people traveling along an RS 2477 right-of-

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		way do so at their own risk. AS 19.30.420. RS 2477 did apply nationwide, to all unreserved federal land. Some other western states have been as aggressive as Alaska in asserting management rights over RS 2477 rights-of-way within their boundaries.
55	What are appeal time limits and fines? People can't appeal a DNR decision if they didn't hear about it.	The administrative appeal period is at least 30 days. See 11 AAC 02. DNR's appeal regulations and public easement regulations do not include any provision for fines. DNR agrees it should give notice of its easement decisions so that the public can participate in the decision. This chapter covers easements reserved by DNR before a land disposal, which requires a decision under AS 38.05.035 and a public comment period under AS 38.05.945. It also applies to existing RS 2477 rights-of-way DNR identifies before reporting them to the legislature; although AS 19.30.400 does not require public notice in this situation, 11 AAC 51.055(b) mandates it. When someone petitions to vacate or erase an easement, 11 AAC 51.065(c) says the "replat" requirements must also be met; this automatically includes notice and a public hearing under AS 29.40.120-.140. In addition, DNR commits to giving more widespread notice of a proposed vacation, and that commitment has been added to 11 AAC 51.065(c). Finally, 11 AAC 51.100 promises that DNR will give notice before issuing a permit to develop it in a way that would change traditional access, and in some cases will require survey so that the property owner can be identified and contacted. Still, DNR acknowledges there is no foolproof way of notifying everyone of every event affecting state-owned easements.
55	If there is no applicable land management authority, the regulation should call for notifying the mining district of an identified RS 2477 right-of-way.	See the revised 11 AAC 51.055(b)(4) for expanded notice provisions.
55	Notice of an identified RS 2477 right-of-way should be given to any private landowner whose land is crossed by the route, unless it was reserved in the deed.	DNR would like to require this, but unless the route is surveyed, it is difficult or impossible to know whose land it crosses. Even a GPS survey does not provide this information unless it is "tied" to property boundaries.
55	What has happened to the rights of private property owners? How can the state open our property to public use and make us liable for it? Some members of the public litter, set fires, steal, and fire weapons. The state should protect us from this, not expose us to it. The regulations are unacceptable.	If the property is subject to a public easement, it is legally open to public access. This is existing state law and DNR cannot change it. A landowner who finds this situation intolerable can petition to vacate or relocate the easement, 11 AAC 51.065. In the meantime, 11 AAC 51.920 gives the landowner protection against liability. State law also provides some protection if an injury is caused by a "natural condition" on a trail, and says that someone using an RS 2477 trail does so at his own risk.
55	Form letter 1.	See detailed response under this section.
55	Form letter 1.	See detailed response under this section.
55	The mere existence of a moose trail that	The commenter is correct that this chain of events, if it

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	later becomes a footpath and is then used by four-wheelers does [not] create an easement. Otherwise we'd have to fence our property and stand guard to protect it. Common sense and respect for others' property rights must prevail.	happened on private land, would never create an easement that would be subject to the proposed regulations. (It might create a "prescriptive easement" on private land, but the proposed regulations do not deal with that sort of easement.) For instance, RS 2477 rights-of-way were never created on land that was already in private ownership; they could only be established on unreserved, unappropriated federal land—meaning public domain land that was not yet taken up for homesteads, mining claims, etc. Also, mere casual use of a footpath/ORV route to get into the back country for recreation, fishing, or hunting would not suffice to create an RS 2477 right-of-way, according to the Alaska Supreme Court (*Hamerly v. Denton*).
55	AS 19.30.400 lists 1,899 RS 2477 rights-of-way, but only a few are credible as future highway projects. If neither DNR nor DOTPF plans to develop the easement for public access, why victimize landowners and deprive them of their property?	The statute lists "only" 602 rights-of-way, but the commenter is correct that most will probably never be developed as future state highway projects. That is also true of section-line easements, many of which are also RS 2477 rights-of-way. However, public easements can be crucial regardless of whether there's a state road on them. Alaskans use networks of informal trails, mostly self-made, for recreation, subsistence, mining exploration, village-to-village travel, or to reach private property in remote homesites and homesteads. Such access is essential.
55	It's now obvious that these RS 2477 selections have the same detrimental effect on other private landowners as our local case, RST 625/Lovers Lane near Cantwell. It is reasonable for the state to procure federal lands for future public highways, but not to take private land. The proposed regulations invade private property rights.	An RS 2477 right-of-way could not be valid unless it was created while the land was still federal. In all such cases, the state was granted the right-of-way (a property right) before other interests in the land passed into private hands. An RS 2477 right-of-way cannot be "selected" or taken by the state after the land is privately owned; it had to predate any private ownership. Also, for RS 2477 rights-of-way along traditional trails (rather than along section lines), the highway itself had to be built while the land was still federal. They are not reserved for future highway construction; they were reserved because a highway already existed, at least in historical times. In the case of RST 625, documentation shows that construction or use occurred by 1924 at the latest, and perhaps as early as the 1900's, decades before the first private entry (1942).
55	Reevaluate the proposed regulations to ensure that RS 2477 rights-of-way do not harm private property, that adverse impacts will be addressed, and that landowners will be fairly compensated for any loss in property or value, including legal fees. I speak as a landowner adversely impacted by an RS 2477 selection.	DNR sympathizes with landowners who are surprised to find that their property is subject to an RS 2477 right-of-way. However, DNR does not "select" RS 2477 rights-of-way or create new ones. If an RS 2477 right-of-way is valid, it is already a legal cloud on the landowner's property, because it existed before the private property existed. Anyone (including another private party) can bring the right-of-way to light and prove it in court at any time, as happened in the case of *Fitzgerald v. Puddicombe*. In property law, "first in time is first in right." A private landowner is not entitled to compensation for "losing" a right he never had in the

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		first place. However, impacts on landowners can certainly be considered in managing or vacating RS 2477 rights-of-way. For instance, a 100-foot-wide right-of-way might be reduced to cover an existing road and utility lines if they provide adequate access.
55	Reevaluate the criteria to determine that a trail is a potential RS 2477 right-of-way. Realistically quantify the present and future need for each identified RS 2477.	The criteria are set by court decisions, and DNR's regulations do not have the power to alter them or waive them. Whether the grant was "accepted" (i.e., whether a right-of-way was created) depends on the land's status at that time (was it unappropriated, unreserved federal land?) and the actions taken by public officials, or the general public, at that time (was there a positive act by a public authority accepting the grant? Or was there sufficient public use or construction to accept the grant, according to applicable law?). A valid RS 2477 right-of-way is a state property asset, regardless of present or future need. Need is important to consider in managing that right-of-way, or deciding whether to vacate it, but does not affect the right-of-way's validity.
55	Innuendos in the proposed changes will allow misuse of RS 2477's intent, which was to ensure public access where there were no designated roads or other legal access. Merely identifying "historic" paths should not qualify a route as an RS 2477, without a need or commitment for it.	RS 2477 was a one-sentence law with few strings attached: "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." So long as the land was unreserved, unappropriated federal land, RS 2477 could apply. However, the commenter is correct that Alaska court decisions have added some "strings" and that being "historic" is not enough to qualify as an RS 2477 right-of-way. See 11 AAC 51.055(b)(3): the evidence must show that either public use or construction, or a positive act by a public authority, "constituted acceptance of the right-of-way grant under RS 2477 in accordance with applicable law." For instance, applicable law—an Alaska Supreme Court decision—says that to establish an RS 2477 right-of-way by public use, the trail had to have significant termini or destinations, not just venture out into wild country for hunting or recreation. Similarly, the Alaska Road Commission (a "public authority") built many wagon roads and pack trails that established RS 2477 rights-of-way. Its work was limited to trails it judged "needed and…of permanent value for the development of the district." It was prohibited from constructing a trail "to any town, camp, or settlement which is wholly transitory or of no substantial value or importance for mining, trade, agricultural, or manufacturing purposes."
55	Many people are not aware of RS 2477 trails through their land as they have been blocked or rerouted years before. Straightening this out will be devastating enough without incurring liability too. For example, how can miners be responsible for skiers, dog mushers, etc. having accidents on their claims during the winter,	DNR agrees. See 11 AAC 51.920 saying the lessee or grantee is not liable for accidents. Of course, a property owner must take reasonable care not to create dangerous conditions such as unmarked excavations.

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	when they are probably not even in the state?	
55	Subparagraph (b)(3)(B) needs to recognize that private parties, not just a "public authority," established many or most RS 2477 rights-of-way.	That concept is already in the regulation, but in (A) rather than (B). (A) covers RS 2477 rights-of-way established by "public use or construction" of a highway (for instance, a road built by a mining company to freight equipment into a mining district). (B) covers RS 2477 rights-of-way established by "a positive act on the part of a public authority" (such as a road built by the Territorial Board of Road Commissioners or the federal Board of Road Commissioners for Alaska/Alaska Road Commission). Private parties are not a "public authority," but Alaska court decisions are clear: an RS 2477 right-of-way can be established either by acts of a public authority or by public use. *Hamerly v. Denton*.
55	When DNR gives public notice that it plans to report a newly identified RS 2477 right-of-way to the legislature, supporting as well as contrary evidence should be invited.	DNR agrees and has reworded the reference.
55	The burden of proof on an RS 2477 right-of-way should rest with the state, which should encourage help from all sources. The state has not been actively promoting RS 2477's, and as our pioneers die, we're losing historical proof that should have been videotaped.	The burden of proof does rest with whoever asserts the right-of-way's existence. That can be a private party (e.g. *Fitzgerald v. Puddicombe*, Knik Glacier Trail, RST 17). DNR welcomes information from all sources and some case files do rely on tapes or transcripts of interviews with early trail users. Such information is a key factor in one of DNR's current test cases, Harrison Creek, RST 8.
55	The limitation that someone cannot appeal unless he or she participated during the comment period is unreasonable. I reserve my right to appeal at a later date. Please make note of this in your files.	DNR decided to remove this requirement from the regulation. However, it plans to add such an option to its general appeal regulations, 11 AAC 02. Administrative appeals must be filed during the appeal period, and court appeals must be filed within 30 days after the final administrative decision. The appellant must also state what is being appealed. Therefore the commenter cannot pre-file an appeal on all future decisions involving RS 2477 rights-of-way.
55	Subparagraph (b)(3)(B) needs to recognize that private parties, not just a "public authority," established many or most RS 2477 rights-of-way.	That concept is already in the regulation, but in (A) rather than (B). (A) covers RS 2477 rights-of-way established by "public use or construction" of a highway (for instance, a road built by a mining company to freight equipment into a mining district). (B) covers RS 2477 rights-of-way established by "a positive act on the part of a public authority" (such as a road built by the Territorial Board of Road Commissioners or the federal Board of Road Commissioners for Alaska/Alaska Road Commission). Private parties are not a "public authority," but Alaska court decisions are clear: an RS 2477 right-of-way can be established either by acts of a public authority or by public use. *Hamerly v. Denton*.
55	When DNR gives public notice that it plans to report a newly identified RS 2477 right-of-way to the legislature, supporting as	DNR agrees and has reworded the reference.

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	well as contrary evidence should be invited.	
55	Although I agree with repealing the nomination fee, these regulations seem to offer no process for identifying trails not yet researched—probably at least three times the number found so far.	Compare the original 11 AAC 51.020 to 11 AAC 51.055. The evidence to be gathered is the same as required under the original regulation. The difference is that DNR will gather the documentation instead of making the nominator responsible for doing so. This complies with legislative policy set out in AS 19.30.400, which requires DNR (not private parties) to "conduct the necessary research to identify rights-of-way that have been accepted by public users under [RS 2477] and that have not been previously identified and shall annually report [them] to the legislature…."
55	Why require mapping on inch-to-the-mile maps? Yet in (c) DNR only requires itself to determine the "approximate" location of the right-of-way.	The two policies are consistent. Inch-to-the-mile maps are not available everywhere, but being able to identify the route at that scale is certainly desirable. However, even if the route is shown by USGS itself on an inch-to-the-mile map, that does not mean its location has been determined with precision. Cartographers use aerial photos or older maps as their guide, but can only generalize where the route is indistinct or the trail has multiple branches. A USGS map is not a survey plat.
55	Why consider only contrary evidence after the public comment period? And why give notice of the final identification decision only to those who commented?	The regulation has been reworded. Of course DNR will consider evidence supporting its identification decision, not just the contrary evidence. In subsection (d), the department does promise to give notice of the final decision to those who participated in that decision. However, it would be expensive to provide another round of newspaper notice at that point, and DNR does not feel it can commit to do that. Note that the legislature's instructions to identify and report annually on RS 2477 rights-of-way (AS 19.30.400) did not include any public notice provisions whatever.
55	It should be clear that work by private parties also constituted acceptance of RS 2477 rights-of-way. Commonly groups of private miners acting together developed and improved the roads. They were the only "public" in those mining districts.	The commenter is absolutely correct. In the regulation, public use (also known by the legal term "public user") is listed as one of the two methods of accepting an RS 2477 right-of-way grant. In fact, the regulation lists that method first, before "a positive act of a public authority," to recognize the major role that miners, homesteaders, and other private individuals—collectively "the public"—played in establishing historic rights-of-way in Alaska.
55	Supporting evidence, not just contrary evidence, should be accepted.	DNR agrees and has reworded the reference.
55	The RS 2477 law tramples on property rights, allowing takings without just compensation. The federal government and lower 48 states have done away with it. Its only support is from special interests such as miners, trappers, and the Alaska Outdoor Council, not the general public. In that summer 1999 fiasco over recording, we were told a trail was on our property and it was 60 miles away—dumb.	RS 2477 was repealed many years ago by the federal government, but once an RS 2477 right-of-way is created, it does not disappear or cease to exist unless it is officially vacated. It is not a "taking" of private land, because by definition, the right-of-way had to be created while the land was still in federal ownership and before any homesteads, mining claims, or other private entries existed. Many members of the general public, not just those who belong to groups such as the Alaska Outdoor Council, appreciate and use access via RS 2477 rights-

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		of-way—sometimes without even realizing that RS 2477 was how the state acquired public access. DNR had advised against enacting the provision that required recording of unsurveyed routes. DNR did not proceed with the 1999 recording of such routes, and proposed a bill to change the requirement so that it would not apply to unsurveyed routes across small private parcels.
55	Access disputes on private land should be left to the private parties to resolve in court, not by invoking RS 2477. This is a problem in urban areas. DNR has abused the purpose and intent of RS 2477, violating owners' rights.	An access dispute that involves an RS 2477 right-of-way necessarily involves the state, as it is a public property right. DNR considers it part of DNR's mission, not an abuse, to protect public access rights. If DNR has done its homework and the right-of-way is valid, the courts will eventually uphold it. The commenter should bear in mind that anyone else can do that same homework and assert an RS 2477 right-of-way—most Alaska RS 2477 court decisions so far were the result of disputes between private parties. So even if DNR were not involved, RS 2477 is a powerful access tool and will be used.
55	I question the validity of pursuing rights-of-way under a federal law, RS 2477, that has been repealed. Native corporations do not recognize those rights-of-way, and BLM does not recognize RS 2477 selections made after the repeal. The courts will have to resolve this and meantime the state is misusing the intent of this law.	The commenter is correct that RS 2477 was repealed in 1976. However, repealing a law does not take away property rights granted or vested while it was in effect. For example, that same 1976 legislation repealed the federal homestead laws, yet that did not take away or erase private land that had been obtained by homesteading. Unlike state land acquired under the Statehood Act, DNR does not "select" RS 2477 rights-of-way from the BLM. Instead, it researches historic land title and historic public use to bring existing RS 2477 rights-of-way to light. DNR understands that private landowners, including Native corporations, may object to this process—especially if they were not aware, when they acquired the land, that the state already had a public easement across it. DNR also agrees that a private landowner does not have to take DNR's word that an RS 2477 right-of-way exists and can bring a court challenge to make DNR produce its evidence of historic land status and use.
55	An RS 2477 right-of-way across private land is a taking without compensation, forbidden by the U.S. Constitution.	The commenter is not correct. To be valid, an RS 2477 right-of-way had to be created while the land was still in federal ownership and before any private entry occurred under the public land laws and mining laws. The private landowner took his land subject to all "valid existing rights" (property rights granted to others before he came into the chain of title). It is not a "taking" of private land when the public uses a right it owned all along.
55	The state has no right to seize private property as historic trails. If the trails were in use, they should have been recorded as public rights-of-way before the land passed into private ownership. It isn't right for the state to come back 50 years later and say "There used to be a trail	If the historic trail is on a valid RS 2477 right-of-way, it WAS reserved before the land passed out of federal ownership. Recordation of the right-of-way would have been useful, but was not required, and still isn't: Alaska is not a "mandatory recordation" state for property transactions. A public easement is a property right that continues to exist unless and until it is abandoned.

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	someplace; we're putting it in your yard." If property is sold without restrictions, you can't come back later and change the deal.	Although later private landowners might not know the easement exists, which is unfortunate, that does not change its status as a "valid existing right" to which the private land is subject.
55	If DNR doesn't make its final identification decision public, how will people know of the result? They could easily break the law unknowingly. With poor public notice to begin with and only 30 days to comment, a landowner could miss the whole process. It looks as though DNR is trying to sign away my administrative and judicial appeal rights.	The final decision will be sent to those who commented (see 11 AAC 51.055(d) for this commitment) and will be noted on DNR's website. Ultimately it will be made public as required by AS 19.30.400: by being sent to the Alaska legislature. The 30-day comment period required by the draft regulations is the same period required by statute before a state land disposal—a notice so important it is mandated by the state constitution. It should be adequate for this purpose too. A landowner could theoretically miss the whole process (including the administrative appeal period), but would not lose his judicial appeal rights. Anyone who thinks there is not a valid right-of-way on his land can resolve the question, without or regardless of DNR's action, by filing a quiet-title action. See *Fitzgerald v. Puddicombe*, for example.
55	"Approximate locations" of RS 2477 rights-of-way are inadequate. DNR's last public notice was so obscure it was a joke. "Cantwell Small Tracts Road (Lovers Lane)" could have been any of six old roads there. "Fairbanks Creek-Fish Creek" is where? There are at least three Fish Creeks in the Interior! Couldn't you at least include township and range for these routes?	The commenter makes a good point. Local names may differ or overlap, making it difficult for people to know if they're all reading from the same sheet of music. However, there is no obvious solution to this problem of overlapping or informal names for trails. Most lay persons are not familiar with township and range nomenclature.
55	The subsection on public notice is either ignorant of communications in rural Alaska or intended to keep the public in the dark. We don't have Internet access—no power lines, no telephones. We don't get any newspapers. We don't get radio reception. Posting at the post office is a good idea, also at municipal offices, but why not also post at the local roadhouse, fuel delivery office, or bar/café? I recall a statute or reg calling for the state to post notices not only at the post office but two other public places.	This regulation was based on DNR's public notice law, AS 38.05.945, although there is no statutory requirement for public notice of RS 2477 right-of-way identifications. The regulation requires considerably more public notice than the repealed 11 AAC 51.030, which called for one notice in a local paper. DNR is aware that communications are difficult in rural Alaska, although Internet access at schools and wireless communications at home could ease that situation in the future. Adding additional posting requirements is a good idea. Recently adopted Alaska Coastal Management Program amendments require a notice to be posted in three public places (unless it is published in a local newspaper, in which case there is no posting requirement).
55	No way can a pencil line on a 1:63,360 map adequately define an RS 2477 right-of-way. A pencil line would be 108 feet wide at that scale! That is a big problem across small parcels; the landowner couldn't even tell if it was on his land. If the proposed easement crosses private property of 160 acres or less, it must be surveyed to prevent disputes. At least the	First, bear in mind that a valid RS 2477 right-of-way is not a "proposed" easement, and public use of it is not a "taking" of private property. By definition, that public right existed before any private property right came into the picture. DNR agrees, however, that a pencil line on an inch-to-the-mile map is not adequate to locate the easement with respect to private property boundaries. Only a survey can do that. That is why 11 AAC 51.100 calls for a survey before DNR issues a permit to develop

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	state can do that if it is going to take private property.	an easement across private property. (The regulation has an exception if the location of the easement can easily be determined and there is no dispute whose land it crosses.)
55	It seems most RS 2477 easements are based on the fuzzy notion that the "public" accepted them and somehow turned them over to the state. If so, why can't the opposite be true: that the "public" and landowners agree the easement no longer exists? This has happened and could save the department much money and grief.	Although it might go too far to say "most" RS 2477 rights-of-way were accepted by public user, the concept is not at all fuzzy. It is a traditional concept of long standing, dating back at least as far as 1938 in Alaska (*Clark v. Taylor*) and considerably farther in other Western states. (According to information gathered by the U.S. Interior Department, the law in Colorado, Idaho, Kansas, Nebraska, New Mexico, Oregon, Utah, Washington, and Wyoming also allowed RS 2477 rights-of-way to be accepted by public user.) These easements thereupon became state assets held in trust for the public. State law subsequently governed how and whether the easement could be vacated or extinguished. DNR's interpretation of AS 19.30.410 and AS 38.95.010 is that an RS 2477 right-of-way cannot be extinguished by non-use or by adverse possession, but only by an official vacation. (AS 19.30.400 lists many rights-of-way that do not currently show any sign of a road or trail.)
55	Why would a prospective buyer of property crossed by a possible RS 2477 right-of-way want to pay for land he might not be able to use?	DNR agrees that it is in everyone's interests to resolve uncertainty over potential RS 2477 rights-of-way as quickly as possible. A buyer is likely to discount for uncertainty (i.e., assume the worst and bid lower accordingly); the landowner is not sure what his rights are; meantime the public may be leery of using the route; other landowners attempting to use the route to reach their parcels may find their access blocked, making their private property completely unmarketable. Any of the parties can get the right-of-way's status resolved in court. If the right-of-way exists but encumbers more land than is needed for access, the landowner can then ask for the excess to be vacated under 11 AAC 51.065. Another alternative that has been added to 11 AAC 51.065(f) is to move an unplatted route elsewhere on the same property, e.g. down a boundary line, to reduce the impact on the parcel. Such a realignment will not require a formal vacation process.
55	How can an agency create public easements on private land based on something that did or didn't happen 50 or 100 years ago? Without even telling private landowners about it or recording anything? Yes, RS 2477 rights-of-way are important to secure easements across federal and Native corporation lands, but the way DNR operates the program on private land is a "taking." The existing certification regulations at least gave a modicum of protection to landowners.	Neither DNR, the legislature, nor anyone else can "create" an RS 2477 right-of-way at this late date: the law was repealed in 1976. An RS 2477 right-of-way either exists (based on land status and historic actions while RS 2477 was still in effect—yes, even 100 years ago), or it doesn't. Anyone may assert or challenge an RS 2477 right-of-way in court, without waiting for action by DNR, and many people have done so. There is no law or court decision requiring recordation or notice to later landowners in order for an existing public easement to remain valid. All property acquisitions are subject to "valid existing rights." Someone who buys a

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		parcel of land crossed by an existing road, currently being used by other people to reach their own parcels of land, should not be surprised to find there is a public easement for that road.
55	I am definitely against the proposed regulations. How can you put an RS 2477 right-of-way somewhere without knowing where it is? Why would your research department know more than anyone else? This is confiscation. Are you going to imprison and kill people if they resist?	Very few RS 2477 trails were surveyed at the time of construction. The people who built them knew where they were, of course, but maps might not have been available. That sometimes makes it difficult, almost an archeology exercise, to recreate the original route. Even routes constructed by public officials (such as by the Alaska Road Commission or Territorial Board of Road Commissioners) were usually mapped instead of surveyed. DNR does not claim that its research is better than anyone else's. Any diligent researcher should be able to repeat the work, consulting historic land records, title documents, and document archives.
55	I think it is terrible to put a public trail easement on someone's property. That should never be done unless it is the ONLY way to access important public lands such as a lake or river, and even then it should be placed on the parcel boundary so that people do not have to watch strangers pass by their front window. And why should the landowner be liable for accidents and damage? All for some ridiculous trail that hasn't been used for years, when people can already get from point A to point B without having to travel across the landowner's property?	DNR can't place a public trail easement on land that is already private. All of the easements covered by the proposed regulations were either reserved by DNR before the land passed out of state ownership, or were granted under RS 2477 before the land passed out of federal ownership. When DNR reserves easements before a land disposal, it does try to align parcel boundaries with them so that trails don't cut across the middle of a parcel. With RS 2477 rights-of-way, the land may have been subdivided without taking the trail into account and maybe without the landowner's knowledge that it existed. The result may be that the trail goes through the middle of the property or slants across it. If the trail hasn't been used for years and other access has already been developed for road traffic, utilities, and recreational access, the landowner can propose that it be vacated. If an unplatted trail is in use but is in an awkward location, the landowner can propose to relocate it (rebuild it along a less intrusive alignment) elsewhere on the property. Under 11 AAC 51.065(f), such a realignment within the same parcel does not require the formal vacation process.
60	Eliminating certifications harms property owners, bypassing legal procedures that protect their interests. This is dictatorial.	The old 11 AAC 51.060's requirement for notifying property owners of a proposed certification was fatally flawed. In most cases, it is simply impossible to provide such a notification until the easement is surveyed and its location is known relative to the parcels it crosses. (Notification may be difficult even then, as Alaska is not a "mandatory recordation" state and a great deal of private land has been informally subdivided and sold in the past.) This is why 11 AAC 51.100 requires a survey before DNR permits construction on an unsurveyed route. DNR will then notify and seek comments from the owner of the land crossed by the easement. If the landowner challenges the easement's existence or the accuracy of the survey, he has the right to appeal it and then go to court. DNR believes this will provide due

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		process and will actually work, unlike the former 11 AAC 51.060.
60	The certification regulations DNR is trying to repeal provided a way to minimize damage to private landowners. They were notified and had a chance to negotiate among themselves and DNR to find a minimal-impact solution. Trying to change this is arrogant, disrespectful, and unacceptable.	The repealed regulations did not provide any opportunity whatever to "negotiate" over the existence or width of an RS 2477 right-of-way. DNR regrets that anyone may have misinterpreted them in this way, although it does not see how this misunderstanding developed. The sooner it is rectified, the better. The existence, scope, and width of an RS 2477 right-of-way are a matter of historic documentation, historic use, and historic land status. Although it may seem harsh or disrespectful to the landowner, the current landowner's opinions and preferences have no bearing on these factual questions. Once the existence, scope, and width of the right-of-way are established, DNR can and will consider the landowner's wishes in managing, realigning, or modifying the easement.
65	If reasonable alternate access is available, can the public be restricted from using a route that is detrimental to the land or the landowner's interests?	Yes, the vacation process set out in 11 AAC 51.065 can be used to vacate, modify, or relocate an easement. Phase 2 will address other ways to manage public use of an easement, with permanently changing it. However, state law limits DNR's power to restrict public use. See AS 38.04.058 and AS 38.04.200.
65	Clarify and streamline this section.	The vacation process is a subject of very strong legislative and public interest. Procedural safeguards are essential to provide a role for the local platting authority, protect the petitioner's right to due process, and ensure that public access rights are not lost. Procedural safeguards cost time and effort to fulfill, but DNR considers easement vacations too important to streamline.
65	The guidance for vacating RS 2477 rights-of-way is unclear. What principles or practical considerations justify the State dictating where municipalities record public rights-of-way? What if a proposed or recorded RST whose vacation is sought is impassable or nonexistent? Then a simple game trail might provide equal or better access.	State law prohibits municipalities from vacating RS 2477 rights-of-way. AS 29.35.090(c). DNR cannot change this legislative policy. However, DNR understands that a vacation also involves a replat, so there is still an important role for the local platting authority to fill. See 11 AAC 51.065(c). As for standards, bear in mind that a trail that has become choked with brush can be cleared again. However, if the easement is truly impassable (for example, because a river has changed course and eliminated the trail), it is a candidate for vacation. The commenter is correct that a simple game trail—once access rights along it are protected by an easement—may provide better access than an RS 2477 easement that no longer has a functional trail. 11 AAC 51.065(d) requires DNR to consider a number of factors in deciding whether the other access is a reasonable replacement for the RS 2477 right-of-way.
65	The [statutory] criterion that a replacement easement must be able to support "all present and reasonably foreseeable uses" is incorrect because the RS 2477 right-of-way itself cannot be used for "all present	The department does not agree with the commenter's position. Ultimately the courts will need to resolve this point.

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	and reasonably foreseeable uses." Its use, particularly its width, is governed by its historical use and width. The state does not have the right to convert an RS 2477 established as a dog-sled track to a four-lane highway.	
65	The regulations create a lengthy, difficult, and costly process to vacate a section-line easement across someone's own land, even if it is being farmed or otherwise used, and even if the easement provides no actual "access" to any other parcel of land. Everyone would have to follow the same procedures as for vacating an RS 2477 trail right-of-way.	There is an apparent misunderstanding here. True, if the section-line easement is an RS 2477 right-of-way, it is subject to the vacation standards set by AS 19.30.410. This is because the legislation treats all RS 2477 rights-of-way alike, regardless of whether they are along historic trails or section lines. However, DNR does not claim that every section-line easement is an RS 2477 easement. Unless it is an RS 2477 right-of-way, the vacation standard is basic: it must be replaced by "equal or better" access. DNR has been using this standard for decades. If the section-line easement does not provide any access to any other land (including public land), it would be highly unusual. It would also be very easy to replace this limited-function easement with "equal or better access."
65	AS 19.10.010 establishes section-line easements for highways. The word "highway" plainly means a road. The regulations muddy the waters by implying that the easement itself is a destination.	Alaska law defines "highway" very broadly (AS 19.45.001(9)). Because section-line easements are for "highway" purposes, they may be used for any of the defined means of access, from a "walk" on up to a primary or secondary highway. In addition, the Alaska Supreme Court has found that unused section-line easements can be used for utility installation. The proposed regulations deal with public access and utility access, but do not state or imply that a public easement is a "destination." Nor do they give the public the right to stop on the easement for recreational purposes, picnicking, camping, picking berries, etc., without the landowner's permission. However, the public has a legal right to travel along the easement, regardless of whether a road has been constructed on it.
65	It is illegal for DNR to vacate an RS 2477 right-of-way. Only the legislature can do that.	AS 19.30.410 specifically allows DNR, DOTPF, "or another agency of the state" to vacate RS 2477 rights-of-way under two specific circumstances. Otherwise the legislature itself must consent to the vacation.
65	I paid over $1000 for title insurance and can't afford an attorney, yet neither my title insurance company nor the Dept. of Law will help defend my property against RS 2477. To get the easement vacated I have to pay to have it surveyed, a further hardship, even though apparently I don't own my own land.	Landowners understandably feel threatened when the state or a private individual asserts an RS 2477 right-of-way crossing their property. If a trail was unused for many years and is now overgrown, there may be no obvious clue that would have alerted the landowner or the title insurance company to a potential RS 2477 claim. But once the trail comes to light, DNR is required to research it and identify it as a valid RS 2477 right-of-way if the route qualifies. Landowners can petition to have the right-of-way vacated or modified. The vacation process is not fast and easy, because of its safeguards to ensure against loss of necessary public access, but it is possible so long as access is otherwise available. In

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		some cases, the survey requirement can be waived. Either way, the existence of a public access easement does not mean that the landowner "does not own" the land. Land title is traditionally viewed as a "bundle of rights," and an easement is only one stick in that bundle.
65	RST 278, the Fairbanks-Chena Hot Springs winter trail, could avoid many private parcels in Sec. 31 of T1NR2E, FM, by being moved a small distance south to borough and state land. Trails were originally built to get from point to point, but the road now fills that need; the trail is just used for recreation. Moving it would provide a safer highway crossing of Nordale Road, too.	Under 11 AAC 51.065, the commenter could join with his fellow private landowners to propose such a relocation of the trail, and vacation of the existing easement across their parcels. If borough land or borough-selected land is involved, the borough's cooperation would be essential. Of course, the replacement would have to provide equally good access. The commenter is correct that where there is a nearby road (Chena Hot Springs Road) to carry general traffic and possibly utility service, that type of access no longer needs to be supplied by an RS 2477 right-of-way or by a replacement trail.
65	Sec. 1 of Ch. 26, SLA 1998, clearly states that "...every effort should be made to minimize the effect [of an RS 2477 right-of-way] on the affected private property owners. Where practicable, that effort should include working with the property owner to re-route a right-of-way to the area least adversely affected, providing that reasonably comparable access is preserved." Why is DNR not complying with this legislation regarding the Chena Hot Springs trail? If the state wants recreation trails, it should build them on its own land.	DNR stands ready and willing to offer the use of unencumbered state land for trail relocations, although it is up to the affected property owners to start the ball rolling. The proposed relocation will be subject to the vacation standard of AS 19.30.410, which is more strict than the "legislative intent" section quoted in the comment. This legislative intent does not give DNR the power to move the trail off one person's land and place it on borough land or another private landowner's parcel without that party's consent. Nor does it direct DNR to remove all RS 2477 rights-of-way from private land and replace them with trails on state land. If the legislature's goal had only been to build trails on state land, it probably would not have legislated on RS 2477 rights-of-way nor appropriated funds to research and identify them. Some landowners may only want to reroute an unsurveyed trail to another part of their own property where it will have less impact, and DNR believes that Sec. 1 of Ch. 26, SLA 1998 is ideal for this situation. Therefore DNR created an informal process in 11 AAC 51.065(f) to allow this and made clear that it does not require a formal vacation.
65	Being unable to vacate easements or restrict their use destroys the integrity of planning and zoning. Section-line easements should be vacated when alternate access is dedicated so there will be orderly development.	DNR agrees that a one-mile grid of section-line easements may not promote orderly development in rugged terrain such as Alaska's. But even on terrain too wet or steep for a road, section-line easements may offer an excellent corridor for utility lines. And they provide a fallback until equal or better access is dedicated. Once an adequate alternative is available, 11 AAC 51.065 provides an orderly process to vacate or modify the easement.
65	Paragraph (d)(3) needs to say "equal or better access" instead of "a reasonably comparable, established alternative… sufficient to satisfy all present and reasonably foreseeable uses." Then you	Life (and the proposed regulations) would be simpler if DNR could apply the "equal or better" standard to all vacations, but DNR does not have the power to do that where the legislature has set a different standard. The quoted language is from AS 19.30.410, and DNR needs

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	won't have to define "reasonably comparable." Also, say that the access must be established at no cost other than to the petitioner.	to explain how it will interpret or define it. Re costs: The alternative access might be a nearby state highway corridor that the petitioner had no role in establishing.
65	Paragraph (d)(2) needs to require "equal or better" access. Otherwise it's a double standard.	DNR believes the legislation sets out two different standards that are not at all similar. In the situation covered in (d)(2), the legislature gave considerable deference to an official request by local government. However, bear in mind that the legislation also requires DNR to find the vacation in the state's best interests. Even if the local government wants the vacation, DNR cannot approve it if it is contrary to the state's interests.
65	DOTPF's approval should be required before an RS 2477 right-of-way is vacated, not just for section-line easement vacations. The route might be important for the overall state transportation system.	DNR agrees. A requirement for DOTPF's concurrence was added.
65	In (a), "equal or better" access should be required before any vacation.	DNR agrees that should be the rule for easements other than RS 2477 rights-of-way, where there is no standard set out by law. It placed that standard in 11 AAC 51.065(d)(1). For RS 2477 rights-of-way, the legislature has set out the standards, and one of them is lower than "equal or better" access. AS 19.30.410 allows a vacation if a municipal assembly requests it and if there is a "reasonable" alternative for access. Otherwise the standard is much higher: "a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses."
65	In (d)(3), delete the term "improvement"—difficult to define—and instead require that the alternate access be ready for its intended use.	DNR agrees this suggested change improved the regulation.
65	I strongly support the proposal that RS 2477 rights-of-way can be vacated only if equal or better access is available, and that only DNR or the legislature should have the power to vacate them.	Vacation standards for all types of easements must ensure that the public does not lose access rights. DNR interprets AS 19.30.410 to mean that DOTPF also has vacation powers over an RS 2477 right-of-way, but the two agencies should work together as they have always done for section-line easements (that is, both agencies must concur with the vacation).
65	In the lead-in for subsection (d), "RS 2477 right-of-way" and "equal or better" access should be added. Also, DNR should delete consideration of factors such as underlying land ownership and land management policies in deciding whether the other access is adequate. These factors are subjective and will lead to third-party disputes.	RS 2477 rights-of-way are already included (see 11 AAC 51.010 establishing that the chapter applies to all public easements managed by the department under AS 38, specifically including RS 2477 rights-of-way). "Equal or better" access cannot be required as an overall standard because the legislature has set the bar lower than that for one type of RS 2477 right-of-way vacation. As for factors that DNR (not third parties) will consider in determining whether the vacation is in the state's best interests and whether the alternative access is up to the standard, DNR considers them very important. For instance, if the alternative crosses land whose owner is hostile to public access or that has just

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		been subdivided into half-acre residential lots, it will probably not be an acceptable substitute. Or if the alternative is less practical to use, e.g. much longer or steeper or wetter, it is not likely to be a suitable replacement.
65	An RS 2477 right-of-way should not be vacated without involvement and approval by DOTPF.	DNR agrees and has added a requirement for DOTPF's concurrence.
65	In (d)(3), delete the term "improvement"—difficult to define—and instead require that the alternate access be ready for its intended use.	DNR agrees this suggested change improved the regulation.
65	Paragraph (d)(3) needs to say "equal or better access" instead of "a reasonably comparable, established alternative… sufficient to satisfy all present and reasonably foreseeable uses." Then you won't have to define "reasonably comparable." Also, say that the access must be established at no cost other than to the petitioner.	See above.
65	In the lead-in for subsection (d), "RS 2477 right-of-way" and "equal or better" access should be added. Also, DNR should delete consideration of factors such as underlying land ownership and land management policies in deciding whether the other access is adequate. These factors are subjective and will lead to third-party disputes.	See above.
65	DOTPF's approval should be required before an RS 2477 right-of-way is vacated, not just for section-line easement vacations. The route might be important for the overall state transportation system.	DNR agrees and has added a requirement for DOTPF's concurrence.
65	Paragraph (d)(2) needs to require "equal or better" access. Otherwise it's a double standard.	See above.
65	In (a), "equal or better" access should be required before any vacation.	See above.
65	I strongly support the proposal that RS 2477 rights-of-way can be vacated only if equal or better access is available, and that only DNR or the legislature should have the power to vacate them.	See above.
65	Paragraph (d)(2) needs to require "equal or better" access. Otherwise it's a double standard.	See above.
65	In considering "reasonably foreseeable uses," DNR should consider the variety of users who may need access. For example, to a horseback rider, a paved highway	DNR agrees that one lawful use of an RS 2477 right-of-way should not replace or preempt another. DNR has added wording to clarify that these uses must be considered separately—and the replacement access

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	would not provide an adequate replacement for a dirt trail.	does not need to keep them packaged together. The replacement could be a trail easement along one route, a road easement along another, and a utility corridor on a third alignment.
65	A municipal assembly or council should not be held to a lesser standard in providing alternative access in an RS 2477 easement vacation than anyone else.	If there were no statute on this subject, DNR would agree. It has long been DNR's policy, although never before set out in DNR's regulations, to allow an easement vacation only if equal or better access is available. However, when it passed AS 19.30.410, the legislature provided two different sets of instructions on how DNR should deal with an RS 2477 right-of-way vacation. If the municipal assembly or council requests the vacation, the standard for replacement access is much lower. DNR proposes to require that this request be by ordinance, which should ensure proper consideration at the local level. Also, regardless of the local government's wishes, DNR cannot vacate the easement unless the vacation is also in the state's best interests.
65	If an RS 2477 right-of-way is wider than it needs to be, unnecessarily impacting landowners, there should be a way to narrow it even if vacation is impossible (because this is the only access route). The width needs to be reasonable, considering snow removal and access for emergency vehicles.	DNR agrees that this is a reasonable alternative and has modified the vacation regulation to specify that the width can be reduced, either on the original route or a replacement, so long as it remains wide enough for foreseeable uses.
65	It is good to see that only DNR or the legislature can vacate an easement, that the alternative route must be "equal or better," and that the petitioner must bear the cost of establishing that "equal or better" access.	By AS 19.30.410 and other laws, DOTPF can also vacate rights-of-way. And under one scenario (at the request of a municipality), that same law allows a lower vacation standard for RS 2477 rights-of-way, so long as there is still reasonable access.
65	Only the term "equal or better" should be used as the standard for replacement access. Having different standards ("reasonable alternative" vs. "reasonably comparable") is confusing and will lead to extra appeals. And it is inappropriate to use a lesser standard merely because a local entity asks for it—the access is for the public at large.	Although the single "equal or better" standard would have been DNR's preference, the legislature acted to set two different standards for RS 2477 vacations. DNR understands the concern that municipalities may take a strictly local view in requesting vacation of RS 2477 rights-of-way, causing the vacation to be considered under the lesser standard of AS 19.30.410(2). However, DNR itself cannot take a strictly local view. Even using this lower standard, the statute does not allow DNR to proceed with the vacation unless it also "in the best interests of the state."
65	The example of "drainage conditions" that make a route usable only in the winter is clear but could potentially confuse people. What if it crosses a stream that could be bridged, then becoming suitable for year-round use? This example should be deleted and all appropriate examples should be included in a DNR fact sheet for public distribution.	Most people would not think that "drainage conditions" refers to a stream. However, to prevent misunderstanding, the wording has been changed to refer to poorly drained soils along the route. A fact sheet on easement vacations is an excellent idea and DNR has drafted one.

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65	If I try to vacate the unnecessary easements around my property, I will likely be challenged by the adjoining landowners who won't want to give up future access.	The vacation process (by the local platting authority or by DNR if there is no local platting authority) does require notice to neighboring landowners, for good reason. DNR is required by state law to reserve easements not only to provide access for the general public, but to ensure that private landowners don't become "landlocked" by state land sales. DNR has seen several instances in which private landowners reached private access agreements in hopes of avoiding the need for public easements. Sometimes private agreements work; sometimes they end up with squabbles and an inaccessible parcel that can't be resold.
65	It is arrogant to say the property owner must survey a non-existent RS 2477 trail and provide an alternate route [in order to vacate the right-of-way]. It's the state's burden to prove the trail is there and purchase a right-of-way or the whole parcel, at the landowner's discretion. If you're not funded to do that, no trail. Or fire DNR employees and seize legislators' pay until you have the funds; you caused the problem.	The vacation process requires the proposed alternate access, not the existing right-of-way, to be surveyed. And if the existing right-of-way is not surveyed, DNR will not require any plat unless it is necessary to show the location of the alternate route. See the rewritten 11 AAC 51.065(e). Note that the RS 2477 controversy deals with whether a right-of-way exists, not with whether there's a trail at present. If the right-of-way exists, a trail can be maintained or reestablished without any need to purchase rights from the landowner. If there is no public right-of-way for the trail, DNR's proposed regulations do not apply, and public access is at the discretion of the landowner. Also, anyone may assert the existence of an RS 2477 right-of-way and prove in court that it exists: most Alaska court decisions on RS 2477 have involved disputes between private parties.
65	DNR can apparently create an RS 2477 right-of-way with the stroke of a pen, a line on a map in a file drawer. Why, then, should a replacement easement have to be surveyed, platted and recorded? Play fair. Nowhere do I see a requirement for DNR to record RS 2477 rights-of-way, so how is a current or prospective landowner to know it exists?	First, no one—not DNR nor anyone else—can "create" RS 2477 rights-of-way now. The law has long been repealed. However, valid RS 2477 rights-of-way are vested rights that can be identified and brought to light at any time. AS 19.30.400 requires DNR to report newly identified routes each year to the legislature, rather than hiding them in file drawers. Surveying all RS 2477 rights-of-way is a goal for the future, but will take many years. Meantime, DNR has modified the proposed regulation so that vacation of an unplatted easement does not necessarily require platting. A recordable document may be enough to describe the alteration (e.g. if an RS 2477 right-of-way is being narrowed). DNR supports legislation that would require recordation of all surveyed RS 2477 rights-of-way along historic trails, and unsurveyed routes crossing large parcels. DNR does not support recordation of unsurveyed routes across small parcels, because precise location is needed to be sure that only the burdened parcel is affected by the recordation.
65	RST 17, Knik Glacier trail, is surveyed through one parcel and plat notes show entry-exit points through another. It has been upheld by the Supreme Court. Yet a	DNR has to be guided by AS 19.30.410(2), which does set a lower (easier to achieve) standard for a vacation if a "municipal assembly or council has requested the vacation…." To ensure due process, the proposed

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	letter from Mat-Su Borough asked for it to be closed. Borough officials' support or non-support should have little bearing on whether a state RS 2477 right-of-way should be vacated.	regulation requires that such a request be in the form of an ordinance, not merely a letter or phone call from a borough official. However, even with such a request, the law says that the vacation cannot occur unless a reasonable alternative is available and "the vacation is in the best interests of the state." This requirement ensures that the decision will not be driven by a purely local point of view.
75	Easement signs on RS 2477 and section-line easements on our property are regularly destroyed.	DNR applauds the commenter for aiding public access by signs indicating the location of the easements. Unfortunately, a few thoughtless acts of vandalism can defeat the landowner's efforts.
200	Supports DNR's proposal to manage reserved section-line easements. DOTPF's indifference to such management, and electric utilities' disregard for private property rights, or even whether a section-line easement exists or how wide it is, have led to disputes. This is a gray area in the law that has often caused acrimony between neighbors. Some agency with authority and expertise needs to take charge.	Unfortunately, this management question will require further work in Phase 2. AS 19.30.400 places public use of RS 2477 rights-of-way under DNR's authority, unless DNR has transferred them to DOTPF, and requires DNR to have regulations to allow public use. All "federal" (66-foot) section-line easements are RS 2477 rights-of-way. Many "state" (100-foot) section-line easements have a narrower RS 2477 right-of-way inside them. DOTPF is the state's authority and specialist in highway transportation, but unless it has plans to use a section-line easement for future state highway construction, it is understandably reluctant to assume management obligations for general public use. On the other hand, AS 19.25.010 requires a DOTPF permit for utility use of a "state right-of-way." Almost certainly the legislature intended that term to include section-line easements and RS 2477 rights-of-way. DNR and DOTPF will need to resolve this apparent conflict.
200	An RS 2477 right-of-way established by public user cannot be broadened to a different width, seasonality, and use. And an easement across federal land is subject to federal authority.	DNR does not agree with the first comment. As to the second, DNR recognizes that the federal and state governments have differing views regarding state authority over easements on federal land.
200	Sec. 015 requires survey and platting of an easement before improvements are constructed. Although reasonable, this may be unnecessary in some cases. For RS 2477 routes across federal or Native corporation land whose owner supports the trail construction, surveys might be irrelevant.	This requirement was moved to 11 AAC 51.100, with an exception for situations in which there is no conflict over the route's location. (However, if the trail improvements will cost more than $100,000 in state or federal funds, state law requires a plat. See AS 38.95.160.)
200	The new regulations will require DNR to "manage" RS 2477 rights-of-way, a costly proposal. For instance, the US Forest Service manages the Resurrection Trail, which the state claims as RST 579. USFS handles trail maintenance, trail user surveys, law enforcement, public meetings, etc., for this popular trail. Where will DNR get the resources to take over this job for all claimed RS 2477 rights-of-	The commenter is correct that DNR has not received funds to manage RS 2477 rights-of-way, nor does it have "citation authority" (basic law enforcement authority) for state-owned property outside state parks. However, it is state law, not DNR's proposed regulations, that DNR must manage RS 2477 rights-of-way unless DNR has transferred them to DOTPF. DOTPF's special expertise is state highway design, construction, and maintenance, and to date DOTPF has preferred not to take management responsibilities for

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	way, with their endless potential for user conflicts and litigation? It can barely maintain the state's park system, which is always underfunded.	any easement on which it has no plans to build a state highway.
200	There should be a two-tier management structure for RS 2477 rights-of-way. DNR should handle initial administration, survey, and platting. When an application is filed to construct and maintain a road or trail, management should be transferred to DOTPF. DNR lacks expertise and training to oversee road construction, whereas DOTPF specializes in this field.	DNR will broach this intriguing idea to DOTPF as part of Phase 2.
200	An out-of-state property owner proposes to clear a section-line easement with a bulldozer to construct a road to his property. We don't want cut-down trees and dirt piled so as to encumber our land and restrict access to our property; we think the slope is too steep to meet borough road requirements, creating a run-off problem; and we want the chance to salvage trees on our property, with enough advance notice that we can do so.	If this easement is managed by DNR, the road builder needs a permit from DNR. The DNR permit does not preempt borough requirements for road construction. If the borough imposes standards for slope, grade, drainage, width, surfacing, etc., the builder will be subject to them as well. And regardless of whether DNR or DOTPF manages the easement, or even if DNR has transferred the easement to the borough for management, the law is clear that the developer cannot clear the entire easement unless that much clearing is necessary to build the road. *Anderson v. Edwards*. The landowner, not the road developer or the state, owns the trees and has the right to salvage usable timber or firewood. Also, the developer does not have the right to berm or otherwise block the landowner's access to the section-line easement, nor leave the landowner's property in an unusable state.
200	We agree that developing a section-line easement should require a permit that would involve the property owner. We live next to a section line and worry that motorized users will use the easement to reach the back of our property, opening us to unwanted visitors and potential liability. Please consider the rights of the private landowner.	DNR's existing regulations require a permit to use heavy equipment to construct a trail. Only narrow trails, cut with hand tools such as chainsaws, are allowed to be constructed without a permit. Requiring a permit gives DNR an opportunity to contact the landowner and hear his point of view. Even if trail construction takes place, users would not have the right to venture off the easement onto the rest of the property without the landowner's consent. See 11 AAC 51.920, which seeks to protect the landowner against liability for accidents on the easement.
200	Any use or construction that would change a section-line easement to be suitable for motorized off-road recreational vehicles should require a DNR permit and approval from private property owners on both sides of the section line. Private property rights should not be sacrificed to such recreational use. Hiking, horseback riding, skiing, mushing, etc. are quiet and non-intrusive. But people use noisy ORV's, dirt-bikes, and snowmachines at all hours, often combined with drinking and high	The commenter raises a good point. A more stringent permit requirement may be justified in those limited situations where the land is road-accessible, privately owned, and occupied by residences, and the section-line easement is not currently used. If the land is not road-accessible, use of ORV's on the section-line easement will eventually be essential so that the landowners can reach their parcels. If the land is not occupied, ORV use will not bother anyone, at least for the present. If the easement is already being used by ORV's, AS 38.04.200 protects that use and limits DNR's power to control it. Alternatively, local government could

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	speeds. Don't inflict all of this on property owners: noise, theft, vandalism, and the risk that a child or a pet might be run down in their own yard. It's easier to prevent this mess than to correct it.	regulate noise levels, speed, hours of vehicle operation, etc., on section-line easements just as they can regulate use of watercraft on lakes DNR owns. Or there may be other solutions the public could propose. DNR will invite a second look at this easement management regulation as part of Phase 2.
200	This section and sec. 210 are dream regulations for environmentalists. A permit system will eliminate the private individual's ability to make or improve roads and trails. An environmental group can even block a private landowner from making a trail on his property wider or safer. There are no time constraints requiring DNR to respond to a permit application.	DNR has required a permit for use of heavy equipment—the usual means of developing a road or trail—since 1970, when 11 AAC 96 went into effect. (An exception is clearing narrow trails without using heavy equipment; no permit is required. DNR used to allow trails up to 3' wide to be cleared without a permit. In recent years that width has expanded to 5'.) In 1992, when former Lt. Gov. Coghill insisted that either DNR or DOTPF must take responsibility for asserting and managing RS 2477 rights-of-way, these long-standing permit regulations were applied to RS 2477. They have now been in effect for several years without the dire results predicted by the commenter. Nor is it true that DNR could prevent a private landowner from improving a trail on his own property. DNR's existing and proposed regulations for public use of an easement do not limit the private landowner's use, except that the private landowner cannot block public access. Most applications to build or improve a trail are part of a larger project, such as a mining or logging operation, and are processed at the same time as other project approvals. However, the commenter will have the opportunity to raise this point again as part of Phase 2.
200	Continuing access for traditional use is one thing, but this goes well beyond that: this says the state can change the easement's use at any time in its sole discretion. It could expand the size of an unused easement and put in a four-lane highway. As landowner, I would have no right to object and would not be compensated.	First, a clarification: DNR can't expand the size of an existing easement (unless the state owns the underlying land). Only the state Department of Transportation and Public Facilities (DOTPF) could do this, using its power of "eminent domain" or condemnation. However, the commenter is correct that an access trail could be widened, so long as it does not exceed the width of the easement itself. A four-lane highway is unlikely to be attempted on a 50- or 100-foot right-of-way (modern standards require much more width for fill, lane separation, smooth curves, and long sight distances), but someone might apply to build a pioneer road, for instance, on an access easement that is currently undeveloped. DNR's existing regulations require a permit for such construction, and 11 AAC 51.100 promises that DNR will give public notice before issuing the permit. The landowner will have a chance to comment on the proposed construction or appeal it. However, the landowner would not be able to veto it nor be entitled to compensation, because an easement reserved or acquired by the state for "highway" purposes includes the right to develop it for anything from a footpath to a modern road. This subject will be addressed further in Phase 2.

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200	Some section-line easements are too steep or wet for a conventional road, yet anyone can get a permit to construct a driveway or trail, with no restrictions to protect the landowner from damage due to water runoff, toxic disposal, or slope failure. Sometimes the easement is merely cut for the firewood.	Disposal of toxics is illegal anywhere, but the commenter is correct that a poorly constructed road on an easement could harm the landowner. See 11 AAC 51.930, which states that the regulations do not lessen an easement user's liability for damage he or she causes. The Alaska Supreme Court decision in *Anderson v. Edwards* made clear that an access developer is liable if more trees are cleared than is necessary to build the road. It is not legal to cut trees for firewood without the landowner's permission.
200	"Uses and activities" (sec. 200(c)) is too broad; it could allow squatters to place travel trailers, bait houses, motor homes, or tents in the easement as has occurred in Mat-Su. At Stephan Lake someone (not the owner) built a gravel pad in the easement to store a boat and trailer. At Big Lake a landowner put posts and cables on the easement to block public use. There are no penalties: the Public Works Dept. only sends letters requesting removal. Easements should be for access, not storage. Who will enforce the intended use?	This clause was moved to 11 AAC 51.100, but was modified to make clear that public "uses and activities" are limited to those involving access. The commenter is correct that this is the purpose of an access easement, not boat storage, parking a motor home, setting up a bait shed, etc. Even the landowner can't legally use the easement for structures or equipment storage without permission, because it would interfere with access. When a squatter does this, it is a trespass on the landowner's rights as well as on the state's reserved easement. DNR shares the commenter's frustration that trespass seems to occur with impunity. DNR does not have law enforcement powers except within state parks, but requests legislation every year that would let it cite (fine) such violators.
200	If erosion has exposed large rocks on a trail, would removing them to make the trail less rocky (without building new trail) count as a significant upgrade?	It probably wouldn't, although the type of equipment to be used is a factor in whether a DNR permit is required. As part of Phase 2, DNR will consider whether the permit requirement could be eased or eliminated for someone who wants to maintain or repair an existing trail.
200	It is not clear whether this section applies to RS 2477 rights-of-way. More importantly, it does not distinguish construction of a new road/trail vs. normal maintenance and repair of an existing facility. The latter should not require a permit.	The section does apply to RS 2477 rights-of-way; see 11 AAC 51.010 saying that the chapter applies to all types of easement managed by DNR under AS 38, including RS 2477 rights-of-way. Under DNR regulations in effect since 1970, travel by or use of heavy equipment requires a permit. In Phase 2, DNR will consider whether an exception should be made for maintenance of existing trails, on grounds that maintenance provides a public benefit and that DNR does not have a budget for this purpose. On the other hand, most RS 2477 rights-of-way are unsurveyed and unrecorded; the road or trail originally built there may be completely overgrown, with no trace to be found by now. What an easement user considered to be "maintenance," merely intending to restore the road to its original condition, might be viewed very differently by the landowner when the bulldozer shows up on his land without any permit requirement, survey, notification, or opportunity for comment.
200	Define maintenance and repair, an area of confusion in DNR for many years. Otherwise, work to make an easement	DNR's permit regulations refer to a list of activities exempt from DNR permits. That list ("Generally Allowed Uses") already allows people to construct new trails up

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	usable could be challenged as not allowed without a permit. Include these examples: brushing the trail; removing alders and other trees; rebuilding culverts or bridges; filling ruts or washouts; applying gravel.	to five feet wide without any permit, so long as they use hand tools rather than heavy equipment. A similar item, listing the examples suggested in the comment, could be added for trail maintenance. Allowing heavy equipment to be used without a permit could be done by amending DNR's permit regulations, amending these easement regulations, or other means. Such a permit exemption, if used in good faith to maintain a road or trail for its current use, would be in the public interest. However, a way would have to be found to prevent abuses and ensure that landowners are not surprised to find a road being built on an unsurveyed, unrecorded easement that they did not know existed. Or there may be other solutions the public may propose when DNR invites a second look at this easement management regulation in Phase 2.
200	Define maintenance and repair, an area of confusion in DNR for many years. Otherwise, work to make an easement usable could be challenged as not allowed without a permit. Include these examples: brushing the trail; removing alders and other trees; rebuilding culverts or bridges; filling ruts or washouts; applying gravel.	See above.
200	It is not clear whether this section applies to RS 2477 rights-of-way. More importantly, it does not distinguish construction of a new road/trail vs. normal maintenance and repair of an existing facility. The latter should not require a permit.	See above.
200	The terms "traditional means of access/outdoor activity" are problematic at best. DNR should not be in the business of defining and regulating them. These management guidelines seem designed mainly to restrict public use via excessive regulation and definition.	DNR agrees that it should not define these terms, because the legislature has already done so in AS 38.04.200. However, DNR is in the business of paying attention to them because the legislature has instructed it to do so in AS 38.04.055 and AS 38.04.200, and in Phase 2, it will once again tackle this topic. Basically, AS 38.04.200 says that DNR cannot restrict any type of recreational or subsistence access, once a "popular pattern of use" has developed, except over a limited acreage, a limited time period, to protect public safety and public or private property, or for natural resource development when a reasonable alternative is available. With this law in place, the commenter need have no fear that DNR will "excessively" regulate snowmachiners' continued use of a trail or jet skiers' continued use of a lake. (Note: these laws do not apply to state parks.)
200	Routine maintenance and management must be allowed without a permit. Also, a person should not have to get a permit to use a public right-of-way. That would make it a "permit right-of-way."	In Phase 2 DNR will consider this maintenance idea, which could be accomplished several ways: issuing a general permit for specific routes to allow the use of heavy equipment for maintenance; changing DNR's "Generally Allowed Uses" list to add that use; changing 11 AAC 96 in the same way; or changing the easement

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		regulations. However, DNR does not agree with the commenter's premise that a right-of-way must be totally unregulated in order to be valid. For example, the public has a right to use the state highway system, but with restrictions on speeds, loads, and allowable vehicles, which do not include bulldozers! Since 1970 DNR has required permits for travel by heavy equipment because it can cause serious damage to trails and to the underlying land. Landowners who fear and oppose public access—not just RS 2477 rights-of-way but even public easements specified in their deeds and shown on their survey plats—would probably be even more hostile if DNR allowed unregulated use of heavy equipment.
200	This section does not differentiate between the public and landowner in outlining uses or restrictions. The rights of the landowner are not recognized or addressed.	11 AAC 51.200 was proposed to deal with public use of the easement, not the landowner's use. (DNR does not have authority over the landowner's use, except that the landowner is not allowed to obstruct public access.) When its survey clause was moved to 11 AAC 51.100, wording was added to make this distinction more clear. However, its safeguards protect the landowner, not just DNR: the survey requirement provides a way to identify and then notify the landowner. A landowner who believes the proposed construction or use will adversely affect him then has the right to appeal.
200	This says DNR assumes full management control over use of an access easement, even if the land is private property. That means DNR is taking over management of private property.	Managing the easement does not mean managing the property as a whole. Even on that part of the property subject to an easement, the landowner is free to manage it in ways that do not obstruct public access.
200	I agree with the minor but important changes recommended by the Alaska Miners Association.	Comment noted.
200	AS 38.04.058 authorizes restrictions on easements only under "terms agreed to in writing by the grantee." Yet this section doesn't provide for getting the landowner's agreement nor make any mention of public safety or property protection, which are the only reasons for which AS 38.04.058 allows restrictions.	11 AAC 51.200 was proposed to deal with public use of an easement, not the landowner's use. If DNR ever saw a need to restrict the landowner's use of the easement, for instance if trail conditions had deteriorated so badly that any additional use would cause severe damage, it would seek the landowner's consent under AS 38.04.058. The proposed regulation does mention AS 38.04.058 by saying that DNR's written determination will include "a finding under AS 38.04.058 where applicable." (Regulations are not allowed to repeat or paraphrase statutes but can cite them as was done here.) This proposal can be further clarified as part of Phase 2.
200	This section and sec. 210 put restrictions on the landowner but don't address the landowner's rights.	With or without DNR's proposed regulation, a landowner whose land is subject to a public easement cannot lawfully prevent public access along that easement. The landowner may view that legal status as a "restriction," or as a public property right senior to his own title in the land. Otherwise, the rules set out in proposed 11 AAC 51.200-210 apply only to the public, and the survey requirement that has been moved into 11 AAC 51.100

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		protects the landowner's rights. A landowner has the right to use heavy equipment on his land however he wishes (including on the easement), and 11 AAC 51.100 was revised to clarify that the landowner is not subject to DNR's permit requirements. However, a member of the public wanting to use a bulldozer to clear a road on that easement needs a permit. 11 AAC 51.100 provides a way to notify the landowner of the proposed permit and give him an opportunity to comment.
200	I have always favored protecting existing public access, but I am beginning to have doubts. It bothers me when landowners try to restrict access—yet it is past time to put restrictions on snowmachiners and four-wheelers. Some exceed the highway speed limit, jumping driveways with reckless abandon. A drunk snowmachiner killed himself and injured a boy in front of our lake at midnight. A snowmachiner killed our little dog. Snowmachines can go 100 mph and may be operated by teens or children. If you cannot control the actions of the nasty minority, it may be necessary to close down access across private property. Until DNR and Public Safety can work out an effective plan to protect public access and prevent reckless operations both, everything should be put on hold.	DNR recognizes the difficulty of controlling reckless or inconsiderate use of easements, particularly easements crossing settled private land. Alaska law does treat snowmachines and other off-highway vehicles as motor vehicles, so theoretically speed limits, licensing requirements, insurance requirements, etc., do apply to them. (See AS 28.35.040 on reckless driving, for instance.) However, these requirements are not widely known or enforced, and are not under DNR's jurisdiction. DNR lacks law-enforcement authority on land or easements managed under AS 38. The proposed 11 AAC 51.200 (Phase 2) would allow easements to be transferred to the Department of Transportation and Public Facilities or to local government—agencies that do have law-enforcement authority—to manage. But enforcement would be difficult at best because modern snowmachines and four-wheelers are so fast and nimble. A reckless operator determined to evade or outrun the law could probably do so. Agencies will need assistance from responsible organizations of snowmachiners and four-wheelers to get a handle on this problem so that it does not trigger a backlash and result in access being restricted for everyone.
210	Don't forget that an easement is a right for a specific purpose.	DNR agrees, although easements for "highway" purposes have a broad span of access uses because of a broad definition of "highway" in state law. State court decisions say that utility lines are a form of access on highway easements, too.
210	This takes away my right to protect my land with no-trespassing signs, and places the state's liability on me. It is ludicrous.	The commenter is free to protect her parcel with no-trespassing signs—but not in a public easement. The public has the legal right to use a public access easement. If the landowner interferes with that right, the landowner is actually trespassing on the public's rights. As for liability, see 11 AAC 51.920. It protects the landowner (the "grantee") against liability.
210	Paragraph (4) is very important because it makes clear a permit isn't needed to use vehicles up to pickup trucks on an easement. But it needs to include RS 2477's.	This paragraph does include RS 2477 rights-of-way. See 11 AAC 51.010 explaining that an RS 2477 right-of-way is a public access easement.
210	Paragraph (4) is very important because it makes clear a permit isn't needed to use vehicles up to pickup trucks on an	See above.

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	easement. But it needs to include RS 2477's.	
210	When I talked to a DNR employee, he told me regulations can't exclude one user group from using an easement. Yet this regulation says people can fish from a public easement. Fishing is regulated. This is very specific.	Although this proposal will need further public review as part of Phase 2, DNR sees no contradiction here. Alaska's Constitution requires free access to public waters. DNR is required to reserve easements to and along public waters so that people can reach the waters and use them, including their resources. The fish in those waters belong to the public, and are not the landowner's property. DNR believes it is useful to make the state's policy clear because many easements reserved by the federal government across lands conveyed to Native corporations specifically prohibit fishing.
210	This means I can't fence my farm to keep my livestock enclosed. I'll be prevented from using land I've paid for, jeopardizing my farm's security.	With written authorization, a landowner could fence across the easement, installing a gate or cattle guard to keep livestock enclosed. Or a farmer might choose to fence next to the easement, using the easement for cutting hay instead of grazing. Another option (with permission) would be to fence leaving a corridor big enough for a trail, but with the understanding that the fence would have to be moved if a road is constructed.
210	I am pleased to see DNR finally recognizing that a miner or anyone else can use an existing trail on an existing easement without any permit from DNR.	DNR's position has remained consistent since 1970. Proposed 11 AAC 51.210 says, "Unless use restrictions are in effect …, any means of access or type of equipment listed under 11 AAC 96.020 may be used on a public access easement without a permit from the department." 11 AAC 96.020 has been in effect unchanged since 1970. It allows "vehicles such as snow machines, jeeps, pickups and weasels" without a permit. However, use of heavy equipment such as bulldozers and backhoes is not included and requires either a general permit or an individual permit. (Use of heavy equipment to travel to and then employ in a mining operation is often approved as part of the mine's plan of operation, rather than by a separate permit.)
210	This section says I can't use farm equipment on my land without a permit.	DNR's rules allowing vehicles up to pickup trucks without a permit, but requiring a permit for heavy equipment, apply to the public rather than to the landowner. 11 AAC 51.100 has been revised to make that clear. DNR can't restrict the landowner's use of his property, so long as the landowner does not interfere with public access.
210	I can't make any management decisions on the land because DNR assumes management authority.	Management authority over an easement is not management authority over the land as a whole. The easement is only one "interest in land."
210	The regulations would make me move my fence line back so I didn't interfere with public access, yet there's no need for access around my farm. The access only leads to other parcels, and they already have access.	If the surrounding parcels now have developed access without using these easements, and the easements don't provide a means to reach public lands and waters, they may no longer be necessary and the commenter could apply to vacate them. Note, however, that additional access may be needed as large farm parcels are subdivided into smaller ones.

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210	The uses a landowner is permitted to undertake are not defined. Are they as restricted as the Parks Highway right-of-way? No signs, no structures, no gardens, no septic fields, etc. That's unreasonable if the easement is 100 feet and the road is 12 feet wide.	When the state acquires a corridor to construct a major highway, it typically obtains all interests in the land, not just an easement. In this situation, the adjacent landowner would have no right for personal use of the corridor. But public easements managed under 11 AAC 51 are a different case. DNR has no authority to tell a private landowner what he can do with his land, including the part crossed by a public easement—so long as he does not block public access without permission. DNR recognizes the rights of the private landowner. Re width: If the easement is wider than can foreseeably be needed for access purposes, the landowner can ask to vacate the excess.
910	What judicial review will be allowed? Sec. 080, proposed for repeal, is more clear than sec. 910. I prefer sec. 080.	The last part of 11 AAC 51.910 addresses judicial review and is identical to the repealed 11 AAC 51.080. The first part of 11 AAC 51.910 deals with the right to an administrative appeal, which must take place before the decision can be appealed to Superior Court. This part replaces 11 AAC 51.070, but is much broader. 11 AAC 51.910 allows an appeal of any decision under 11 AAC 51—whether it involves an RS 2477 right-of-way, a section-line easement, an easement to public waters, an easement management decision, a vacation decision, etc.—whereas 11 AAC 51.070-.080 were limited to certification decisions on nominated RS 2477 rights-of-way.
920	Agricultural landowners who deal with the USDA must keep all their land in conservation compliance under federal requirements. Ag land bought from the state also has a conservation plan requirement. If public use of an easement has a negative impact on the landowner's conservation plan, the landowner is held liable. Please resolve that conflict.	There is no real conflict. Federal and state conservation plans hold the landowner responsible for proper use of his or her property rights, but cannot make the landowner responsible for the public's use of a public property right. If the land is subject to a public access easement, the landowner does not own the right to restrict public access along the easement. Nor can the landowner block access development, which may require clearing of timber and vegetation, earth-moving, etc. *Anderson v. Edwards*. However, that same court case protects landowners by holding access developers liable if they do more clearing than is reasonably necessary, for instance removing all the trees from a wide easement before building a narrow road.
920	How can an owner protect himself against liability?	11 AAC 51.920 helps—although a state law would be better, perhaps broadening AS 34.17.055 to apply to all public easements. AS 09.65.200 also provides some protection if the injury was caused by a "natural condition" on "unimproved land," which is defined to include a trail. Beyond that, good faith and common sense are the best protections. The landowner should be prudent about creating hazards in the public easement, for example by using it for target practice, setting predator traps, or digging unmarked excavations.
920	Provide a legal interpretation of whether the landowner is liable for injury or damage owing to public use of an	DNR's policy, set out in 11 AAC 51.920 and in 11 AAC 53.360 before it, is that the landowner is not liable for accidents. The Dept. of Law will check this section for

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	easement. What about "attractive nuisances" or normal uses by the owner?	validity during its legal review of the final regulations. Owners should bear in mind, however, that this is only a regulation; a statute directly expressing this policy would offer better protection. More importantly, it will not offer any protection if the landowner actually caused the injury through reckless, intentional, or grossly negligent conduct.
920	Form letter 2, comment 4: Property owners are having their property taken from them, yet are legally responsible if someone is injured while on the property.	DNR's policy, as set out in this regulation, is that the landowner is not liable. (DNR supports putting this policy in statute, not just in its regulations. That would be safer because the courts are more likely to honor a statute.)
920	The state removes itself from any liability for injuries or accidents, but nowhere does it release landowners. This is not fair. In other states, landowners are protected from liability.	This regulation, and 11 AAC 53.360 before it, clearly states DNR's policy that lessees and grantees are not liable. Many people misconstrued this regulation, perhaps because the term "grantee" is no longer in common use. In the revised regulations, that broad term was supplemented by the word "owner."
920	If I am not allowed to close an RS 2477 trail across my property, it is vastly unfair to be liable for injuries that occur to people using the trail. The state is the controller and should be liable for any injuries to people or private property.	DNR agrees that the landowner should not be liable. See 11 AAC 51.920, which intends to protect the landowner or lessee against liability. That section expands the former 11 AAC 53.360, which covered only one type of easement (not including RS 2477 rights-of-way). However, DNR does not agree that the state should be liable for injuries on the trail. The state does not control how fast a snowmachiner chooses to go or whether a cross-country skier has the skills to descend a steep hill. State law says that users travel RS 2477 rights-of-way at their own risk. AS 19.30.420.
920	This proposal puts the burden of liability on the landowner who has lost his or her property to RS 2477.	This regulation does not put the burden of liability on the landowner. 11 AAC 51.920 expresses DNR's policy that the landowner is not liable for accidents that befall trail users. Landowners would be better protected if this policy were set out in state statute. But for RS 2477 rights-of-way in particular, it already is: state law specifies that people using an RS 2477 right-of-way travel at their own risk. See AS 19.30.420.
920	Is it too much to ask for a slight attempt to reduce liability for private property owners or those that improve easements on public land?	The commenter will be pleased to note that 11 AAC 51.920 does seek to protect the landowner; in some cases, so does state law (AS 19.30.420 applies to RS 2477 rights-of-way, AS 09.65.200 applies to a trail, abandoned airstrip, or abandoned resource development road across "unimproved" land). If approved by the Department of Law, this regulation will also help protect people who do maintenance work on a road or trail on an easement DNR manages. DNR does not know of any cases holding a private person liable for developing or improving a trail on which someone later had an accident.
920	Who is responsible for ensuring that a public easement is free of hazards and safe for public use?	Easements managed under the proposed regulations are not part of the state highway system. Some are completely undeveloped; others have a jeep trail, ATV route, or only a footpath, created by the trail users

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		themselves rather than a government agency. Alaskans have an unusual degree of personal freedom to use state-owned lands and state-owned easements, but along with this freedom comes personal responsibility. It is up to the easement users to be sure they maintain safe speeds, are property equipped, and have the necessary skills for travel off the beaten track.
920	Liability for injury is being placed on the property owner for actions that are out of his control. What incentive does the landowner have to meet that obligation?	11 AAC 51.920 protects the landowner or lessee against liability just as it does the state. ("Grantee" refers to the person who received the land grant, not to the state as "grantor." "Lessee" refers to the person who received the lease, not to the state as "lessor.") Of course, a landowner must accept liability for an accident he causes, for instance by digging an excavation in an easement and failing to flag it, or stringing a cable across a trail.
920	The landowner should not be liable for what the public does on state easements, although the landowner should certainly not block the easement.	DNR agrees. That is why 11 AAC 51.920 seeks to protect the grantee (owner) or lessee of the property.
920	This liability protection should also include permittees complying with their permit conditions, and anyone acting in good faith to do maintenance or repairs on the road or trail.	DNR agrees with the comment. 11 AAC 51.920 has been reworded to protect persons to repair or maintain an access facility.
920	This liability protection should also include permittees complying with their permit conditions, and anyone acting in good faith to do maintenance or repairs on the road or trail.	See above.
920	The liability section should also protect a person using accepted and reasonable methods to repair or maintain an easement, for example brushing out the route or replacing a culvert or bridge.	11 AAC 51.920 has been reworded to protect persons to repair or maintain an access facility.
930	We read this to mean that someone constructing a road on a section-line easement is responsible for any damage that person suffers or causes. Is this correct?	11 AAC 51.920 protects easement developers as well as landowners against liability for accidents to easement users. However, it does not try to protect easement developers from liability to landowners. State court decisions (*Anderson v. Edwards*) say developers are responsible for unnecessary damage they cause to the landowner's property, for instance by excessive clearing of trees.
930	Users should be advised that long-term damage to a trail or road on an easement may result in liability.	DNR agrees that users must be responsible for damage they cause. 11 AAC 51.930 says this. Damage to real property would include not only the underlying property but the easement itself.
930	This says I can't hold the state liable for damage caused by the public, yet I'm open to liability claims filed by the public.	See 11 AAC 51.920, which protects the landowner from liability just as it does the state. Holding the user, not the state, responsible for damage that user causes is reasonable. If a driver veers off a highway and runs through someone's fence, the landowner would expect

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		the driver, not the state, to pay for the damage.
990	DNR should reconsider implementation. It should set up a working group to include DNR, affected landowners, surveyors, appraisers, and legal counsel. Proceeding with the proposed regulations will otherwise cause needless litigation against the state.	DNR acknowledges that there are legal conflicts over the existence of specific RS 2477 rights-of-way. Litigation may be the only way to resolve those conflicts; DNR's regulations cannot settle these questions. But for the other public access easements covered by the proposed regulations, there is simply no legal question that the easements exist and that the public has the present right to travel along them. Unfortunately, some landowners apparently believe that public easements are only for future highway construction and that the public does not have the present right to use them for access. To DNR's knowledge, there is no support anywhere in state law or caselaw for such a belief, nor does DNR know of any professional appraisers, surveyors, attorneys, or land title experts who share it. If some state land purchasers do not understand that the public access easements across their parcels can legally be used by the public for access, DNR's regulations need to clarify the picture—the sooner, the better.
990	Saying that an easement may be used "for any mode of transportation commonly employed for access purposes" implies that the public is welcome to recreate on the easement itself, regardless of whether they are using it for access. This adds to an already significant problem in the Delta area: some snowmachiners and hunters believe they are free to recreate and hunt anywhere on land that has a section-line easement.	DNR cannot restrict the definition, for example saying that a section-line easement may only be used for foot traffic, because it cannot waive part of the public's access rights. A landowner does not have the right to prevent a snowmachiner from lawfully traveling along a section-line easement, regardless of the snowmachiner's motivation. Maybe the snowmachiner is on the way to his cabin to bring in some supplies, or maybe he simply enjoys the experience of travel by snowmachine. That is legal, just as a pedestrian may simply want to go for a stroll along an easement. That does not give the snowmachiner or the pedestrian access to the rest of the parcel, however. If it is private land, they cannot venture off the easement or hunt there unless they get the landowner's permission.
990	This section defines "navigable water." Is this consistent with its usage in sec. 035?	The regulation does not actually define the term (regulations are not allowed to repeat statutes), but cites where it can be found in state law, AS 38.05.965. Yes, that definition was added to state law by the same 1976 legislation that created AS 38.05.127 (the subject of 11 AAC 51.035), requiring that easements be reserved to and along navigable and public waters when DNR sells state land.
990	The footnote explains about the court case, but I'm troubled by defining "public access easement" to include an access that only benefits the private landowner. How is this distinguished from a private easement?	Remember that the public inherently has the right to use a public easement. If a public easement borders or crosses Farmer Brown's property, only Farmer Brown (or his invitees) may step outside that easement onto his private property, but he is free to travel along the easement just as anyone else is. (DNR had believed this self-evident, but the court case mentioned in the footnote seriously considered the argument that the landowner should not be allowed to use the public

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		easement.) This is different from a private easement. If Farmer Brown owned a private easement leading to his property, only he and his invitees could use it.
990	Define "public authority."	This term included any government agency or board with the power to lay out, construct, or maintain freight trails or wagon roads, for example the Territorial Board of Road Commissioners and the Board of Road Commissioners for Alaska/Alaska Road Commission. Also, some of Alaska's cities were organized very early (Skagway, Valdez, Nome, and Fairbanks were incorporated in 1900 to 1903). It is highly likely these city governments built or improved at least some trails.
990	Define "public authority" and "council."	Defining "public authority" might limit the state in future court cases, as the definition might fail to list an applicable board or agency. Legally the term does not include the general public, nor does it need to: under Alaska court decisions, the general public had independent power to accept the grant of an RS 2477 right-of-way by use or construction (sometimes referred to by the legal term "public user"). The term "council" is used only in 11 AAC 51.065, which implements AS 19.30.410; it has been changed to "city council" in both places to make it clearer. "Council" was added to the law in 1999. It is DNR's understanding that this was merely a technical correction, because a city's governing body is termed a "council" rather than an "assembly." DNR does not interpret this change as an attempt to expand this local government authority to neighborhood councils, community councils, etc.
990	Define "public authority".	See above.
990	Define "public authority" and "council."	See above.
990	Can the definitions of "public" and "navigable" be used in the state's assertions of ownership of navigable waters against the federal government?	Unfortunately, "navigability for title purposes" is a different subject. The definition of "navigable waters" in AS 38 was enacted along with AS 38.05.127 dealing with public access to and along such waters. It does not deal with ownership of their beds.
990	Define "construction" and "improvement. Better yet, define "repair and maintenance" as opposed to "new construction" and drop the term "improvement." This would do much to reduce uncertainty.	"Improvement" is used only in 11 AAC 51.065, regarding improvements needed to replace an easement being vacated, and needs to be broad. However, the word "construction" is used in many places. Where the context made it useful, DNR added the word "new" to emphasize that the intent is a new access facility, not maintenance of an existing one. Example: 11 AAC 51.100(e), circumstances in which DNR will give public notice or notify the landowner before issuing a permit. Phase 2 will consider the idea of allowing repair and maintenance without the need for a permit.
990	Define the term "council" (used in sec. 65, request for vacations of RS 2477 rights-of-way). Would this include a tribal council or a homeowners' association?	Rather than putting DNR's interpretation in the definition section, it has been incorporated directly into 11 AAC 51.065 itself: the request must come from a municipal assembly or city council, and must be in the form of an

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		ordinance. (The governing body of a borough is typically called an assembly; in a city, this body is called a council.) DNR does not believe the legislature intended to include tribal councils or homeowners' associations in this term.
990	Define "public authority."	See above.
990	Use of the terms "other land," "state land," and "land open to the grant of a right-of-way under RS 2477" should be reviewed to be sure they are clear and not contradictory. Perhaps they should be defined in this section.	"Other land" is not used in the proposed regulations. 11 AAC 51.100 does single out easements crossing land "that is not managed under AS 38," requiring more procedural protections of the landowner's rights in that case. (AS 38 applies to most but not all state land. For examples, easements and right-of-way corridors managed by DOTPF are governed by AS 19 and DOTPF's regulations. Other exceptions include land owned by the University of Alaska, the state park system, the Alaska Railroad, etc.) "Land open to the grant of a right-of-way under RS 2477" is simply a matter of the land's status at the time the right-of-way grant was accepted. The land had to be unreserved, unappropriated federal land (in other words, not withdrawn for a park, military installation, reservoir, etc., nor appropriated for a homestead, T&M site, mining location, etc.).