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RS 2477 Project

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Background

RS 2477 stands for Revised Statute 2477 from the Mining Act of 1866, which states:

"The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

The act granted a public right-of-way across unreserved federal land to guarantee access as land transferred to state or private ownership. Rights-of-way were created and granted under RS 2477 until its repeal in 1976. In Alaska, federal land was "reserved for public uses" in December 1968, with passage of PLO 4582, also known as the "land freeze." This date ends the window of RS 2477 qualification in Alaska.

What are RS 2477 Rights-of-Way?

The RS 2477 congressional offer stood for 110 years. Throughout that time, people created legal rights-of-way by using or constructing routes across unreserved federal land. State or local officials could also accept a right-of-way by spending tax dollars on actual construction on the route, or they could pass a law accepting rights-of-way for future construction. According to state court decisions, any of these methods would be enough to create a legal right-of-way, provided the land was unreserved, unappropriated federal land at the time of

construction and use or acceptance. Once a right-of-way was established, it became a "valid existing right" owned by the state. Any homesteads, homesites, Native Allotments, federal parks, etc., created after an RS 2477 right-of-way was accepted would thus be subject to it.

Once established, an RS 2477 cannot be abandoned by non-use, or removed without undergoing a legal easement vacation procedure. As with any other state-owned right-of-way, the federal government could not cancel it, even if the land was later withdrawn or transferred out of federal ownership. RS 2477 rights-of-way provide access to the public and may exist on your property.

The State of Alaska views RS 2477 as an important tool to protect public access across federal land. In the 1980s the State of Alaska and the U.S. Department of the Interior agreed upon and platted several RS 2477 rights-of-way. In the past decade the Department of the Interior has not recognized RS 2477s that cross its land.

The RS 2477 Project

Since 1993, the Department of Natural Resources (DNR) has received varying levels of funding to pursue a research and adjudication project for RS 2477 rights-of-way. The project identifies routes throughout the state that appear to qualify as public rights-of-way under RS 2477. In recent years, court cases have determined the legal validity of RS 2477 routes. There have been few court cases in Alaska that established RS 2477 rights-of-way. In the past, the status of most routes was typically uncontested and acknowledged to be legally valid under 43 USC 932 - RS 2477.

To successfully document an RS 2477 right-of-way on a historic route, the route must be shown to have been constructed or used when the land was unreserved federal land.

Typical route documentation includes:

- * Alaska Road Commission annual reports and maps
- * U.S. Geological Survey bulletins, reports, field notes, and maps
- * U.S. Postal Service contracts, site reports, and maps
- * Other publications (books, newspapers, magazines)

Personal accounts (affidavits) are also valuable evidence of route use and construction.

To date, DNR has researched over 2,000 routes and determined that approximately 647 qualify under the RS 2477 statute.

Current Litigation

The Harrison Creek - Portage Creek route is undergoing litigation. In March 1997 the State filed a Quiet Title action against the Department of the Interior for the right-of-way. This case is still in its "discovery" phase with plans to go to

trial during the winter of 1999. It has the potential to set important precedent regarding the RS 2477 issue.

The state has been involved to varying degrees in three other RS 2477 cases: the Knik Glacier Trail, the Chickaloon River Trail (a Department of Transportation and Public Facilities (DOT&PF) condemnation case), and the Jualin Mine Trail. The State also filed a friend-of-the-court brief on behalf of Paul Shultz's lawsuit, which tried to show that there was an RS 2477 right-of-way across Fort Wainwright. Mr. Shultz's appeal to the United States Supreme Court was denied in early 1998.

1998 Legislation

In May 1998, the Alaska State Legislature passed a new law (AS 19.20.400) entitled "An Act Relating to State Rights-of-Way," that declares that more than 600 routes have been accepted as RS 2477 rights-of-way by public use and mandates that DNR record them in the respective recording districts. This bill was signed into law as Chapter 26, SLA 1998 (AS 19.30.400).

In general, this statute:

- * identifies DNR as manager of these routes, unless transferred to DOTPF;
- * acknowledges that there may be other qualifying routes not yet identified by the project;
- * indemnifies the state from liability resulting from a person's use of an RS 2477 right-of-way;
- * outlines procedures and restrictions for vacating RS 2477 rights-of-way.

In addition, the legislative act mandated the recordation of the 602 routes listed in the bill as qualifying RS 2477 rights-of-way.

The Department of Natural Resources has begun to record the surveyed RS 2477 routes and those crossing large parcels of land held by a single landowner. DNR also notified over 8000 owners of smaller parcels (those within the Fairbanks North Star Borough and Matanuska-Susitna Boroughs) that it was planning to record rights-of-way crossing over their parcels. Public outcry from concerned land owners has curbed those plans. Last year the Department raised concerns about recording unsurveyed RS 2477s across small tracts of land owned by private individuals, and although the Legislature chose not to act on the Department's concerns, Commissioner Shively intends to discuss this issue with the Legislature when it reconvenes next January. The Department does not plan to record routes that cross smaller private parcels this year.

Whether or not an RS 2477 route is recorded, the right-of-way still exists and encumbers the property it crosses. The original RS 2477 route may be re-routed or eradicated only through an easement vacation process. By statute, the Legislature must approve an application to vacate an RS 2477 if no reasonable, comparable alternate right-of-way or means of access exists.

However, if an alternate means of access exists, then the state may approve the vacation.

Impacts of Recording Unsurveyed RS 2477 Routes

There are several issues associated with recording unsurveyed routes, in particular where they cross small private parcels. As an example, a route that is recorded as crossing five parcels may only affect three of them and miss three other parcels that should be affected.

It is impossible to know which specific parcels are actually impacted if an RS 2477 route is not surveyed. Therefore, surveying RS 2477 routes should be made a priority.

Another issue is the broad scale of the historic maps that depict the RS 2477 routes. The actual physical routes may be as far removed as one mile from the line depicted on the USGS maps. This problem is significant in densely populated areas, sometimes increasing the affected parties by a factor of ten. The RS 2477 encumbrance may negatively affect the disposition of private properties for their future use and potential sale.

Once the location of an unsurveyed route is recorded, it is part of the public record and reflects on the titles of all properties over which it apparently passes. If a subsequent survey shows that the route does not really affect a parcel, the original document cannot be removed from the record. The land record may only be amended by recording additional documents, such as disclaimers of interest.

Although RS 2477 routes were not specifically reserved in the original patent documents issued by federal or state governments, all patents are conveyed subject to valid, existing rights. RS 2477 rights-of-way comprise valid, existing rights. Lawsuits will likely occur between individuals who disagree over the actual location of an unsurveyed RS 2477 easement. This is another reason that DNR has advocated surveying RS 2477 routes before recording them. Surveys would ensure each route would be accurately applied to individual properties and reported for all future sales. DNR has asked the Legislature for the authority to record only those routes that have been surveyed or that only cross large tracts of land in single ownership, where the route's exact location isn't an issue. However, the Legislature has chosen not to act on this request. The law is clear that all qualifying RS 2477 trails must be recorded, surveyed or not. Because of the recent public concern expressed by land owners when notified that DNR would record unsurveyed routes across their property, DNR will not record unsurveyed routes crossing smaller private parcels this year. DNR does not believe it is appropriate to cause unnecessary legal problems between landowners and the public. The agency is complying with the requirements of Chapter 26 SLA 1998 by beginning to record the nine surveyed routes and those that impact only large land owners.

The statutes also do not address the issue of width of the RS 2477 easement. This will clearly be important to landowners impacted by valid RS 2477

encumbrances. It will also be important to the public using RS 2477 routes. Generally, it is assumed that the road right-of-way width that existed at the time the RS 2477 grant was accepted applies to that route, up to a width of 100 feet. Individual RS 2477 widths will likely differ.

These issues affect everyone with an interest in RS 2477: public users of RS 2477s, landowners mistakenly impacted due to the lack of a survey, and landowners who should be impacted by RS 2477s but who failed to appear on a list of affected parties due to a lack of survey.

The effect of recording an RS 2477 route across large tracts of land is significantly less than on smaller, privately owned parcels. Generally, owners of large tracts of land do not intend to sell their property, so the presence of an RS 2477 route crossing it does not have the same devaluating effect. If they do decide to subdivide and sell parcels, they may have an opportunity to relocate and build the trail elsewhere on their property where it does not interfere with the subdivision.

Frequently Asked Questions

1. Why does RS 2477 matter anymore?

Since Alaska achieved statehood in 1959, the pattern of land ownership has become complicated. The federal government is still conveying land to the State, and Native corporations are receiving land as part of the Alaska Native Claims Settlement Act of 1971. Since the passage of the Alaska National Interest Lands Act (ANILCA) in 1980, Alaska's federal parks, refuges, preserves and wilderness areas have expanded greatly. Courts have ruled that the RS 2477 right-of-way is transferred along with the title and must still be honored. Land ownership may have changed, but the access needs of many residents have not. These recent land acts included some provisions for access, but they are often difficult to implement. The State of Alaska believes it is important to preserve historic public access across these lands not only for present needs, but for potential future uses as well. Therefore, RS 2477 is an important access tool towards this goal.

2. How does the recording requirement affect me?

Over the last five years, the Department of Natural Resources has been funded to identify those RS 2477 rights-of-way that do exist. Currently, the DNR has identified over 600 such routes that qualify under the requirements of 43 USC 932 (Revised Statute 2477).

Under Chapter 26, SLA 1998, this information will be recorded in the applicable recording district. The title to property crossed by the recorded RS 2477 would be encumbered by that right-of-way. DNR

has begun the recording process by recording across parcels along the ten surveyed rights-of-way and across owners of large parcels through which a route runs in its entirety. DNR has served notice of its intent to record over the properties of persons located within the Fairbanks North Star and Matanuska-Susitna Boroughs. Due to the strong public outcry from this notice, DNR has no plans to record over small private parcels this year, and will approach the Legislature next session for a remedy to the existing requirement.

3. What about the landowner's rights?

Many Alaskan landowners, such as Native corporations and private citizens, want assurance that RS 2477 identification and recording will not damage their rights and interests. Federal, state, and local governments must recognize the legitimate concerns of landowners and land managers and the people they may represent. However, RS 2477 routes existed before the property was segregated as a homestead or other private parcel. They represent the "valid existing rights" to which all patents and deeds are subject.

4. What if the state records an unsurveyed RS 2477 route and my property is inaccurately identified as having an RS 2477 encumbrance through it?

In order to clear your title, DNR would need to record a disclaimer of interest once the route is properly located by survey.

5. What if there is a historic route running through my property but it's not on the list included in the statute?

One of the provisions of the statute is that every year the DNR must report to the Legislature any routes it has determined qualify as RS 2477 routes. Ongoing research makes additions to this list probable. If there is a route on your property that existed prior to any federal land withdrawals, it may be a valid RS 2477 and may appear in state statute at a future time. Should this occur, the route would be recorded in the applicable recording district and your property would be subject to it.

6. If I wish to sell a piece of property with an RS 2477 running across it, will I still be able to sell it?

Yes, but the property will be subject to the RS 2477. It is the job of title companies to point out encumbrances to property title to alert buyers and their lending institutions of what they are purchasing. In some instances it may be possible to re-route an RS 2477 trail onto adjacent state land. Because such re-routes benefit the landowner, the re-route would be at his or her expense (and may include bonding, permit fees, platting costs, and construction costs). The

alternate route would have to be constructed to the same standards and engineering as the original RS 2477 right-of-way.

7. A route leading to public land crosses my property. What if legal access to that land also exists? Will the RS 2477 still affect me?

It will, although as a matter of policy the state prefers to avoid private property when feasible alternatives exist. The state may vacate RS 2477 rights-of-way when it is in the state's best interest to do so. Vacations can occur where feasible alternate access exists or when the vacation is approved by the Legislature.

8. How does the vacation process work with regard to RS 2477s?

The 1999 Legislature passed a new law, Ch. 94, SLA 1999 (formerly SB 45), that changes the vacation process for RS 2477 rights-of-way. With this amendment, only the state--either DNR and DOTPF or the Legislature itself, rather than local government--can approve such a vacation. Because RS 2477 access rights are owned by the state, a request to relinquish them can be granted only if it serves the state's best interests.

However, a right-of-way vacation also requires a plat amendment, and the local platting authority remains responsible for this part of the process. When an eligible party petitions for the right-of-way vacation, the platting authority will hold a hearing to consider whether that change would eliminate anyone's access. Although local government cannot make the final decision on the RS 2477 right-of-way vacation, this process provides a way for local views to be expressed, and the state will consider those views in determining whether the vacation is in the state's best interests. If the vacation is approved by the state, the party petitioning for the vacation must hire a surveyor to prepare a vacation plat. The vacation will ultimately be recorded, which clears the landowner's title.

9. There is a route near my house that I know has been used for over 30 years, but it does not show up on the list in the statute. Can I nominate it?

An individual may submit information regarding historic access routes to the Department of Natural Resources. At a minimum, DNR requires the submission of a map showing the exact route location and at least one historical reference (such as an old map, a citation in a book, or an affidavit) of the route's existence and use prior to December 14, 1968. As time permits, DNR will review the information and inform you of the outcome of its administrative adjudication.

10. What uses can I expect on RS 2477 routes?

Protecting Alaska's RS 2477 rights does not mean maintenance or improvements will automatically happen. Some rights-of-way may be improved for access to valuable state resources, communities, and land. Others will be used as they have in the past, while some may be developed only as hiking trails or not used at all. The state has management authority over public access on RS 2477 rights-of-way. The state requires permits for significant upgrades of trails, a process that may require public notice.

Rights-of-way acquired under RS 2477 provide an access tool for the state that can help meet public access and trail-user needs. However, RS 2477 management questions remain.

On state land and rights-of-way managed by DNR, "generally allowed" uses do not require a permit. For example, these uses include using up to a four-wheel drive pickup on state land if the root system (vegetative mat) is not disturbed.

Other uses of state land may require a permit. If you would like to use a documented RS 2477 route in a manner that could harm the vegetative mat or cut a trail more than five feet wide, contact DNR and the underlying landowners before proceeding. Contact one of our regional offices if you have any questions about whether you need authorization for certain activities.

Case Files

[Follow this link](#) to the [Case Files](#) page. Note: there are some missing trail descriptions. We are currently working to correct and update this information. Thank you for your patience. Please direct any questions on RS2477 to the Division of Mining, Land and Water's [RS 2477 unit](#).

If you need more information about RS 2477, the statute changes, or questions about a particular route, contact:

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