

## Public Easements: Update on New Regulations

As of May 3, 2001, the Department of Natural Resources' new **public easement regulations** have been approved by the Department of Law, filed by the Lieutenant Governor, and are in effect. The new regulations are scheduled to be printed in the July Register of the Alaska Administrative Code. After that publication, the new regulations will be added to the Legislature's **online data base of regulations**.

Thanks to everyone who commented on DNR's original regulation proposal during its public review period from November 1999 to March 2000. Your comments helped the department improve the proposal and decide which parts should become DNR's official policy immediately. An **overview of public comments** on the proposal, along with **more detailed versions**, is still available.

As a result of these public comments, DNR divided the regulations into two parts. Phase 1 is the part that has now gone into effect. But the rest have been set aside for a new round of agency and public review (**Phase 2**) that will begin soon.

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### LINKS TO:

- [New Easement Regulations \(Phase 1\) - 5 KB .pdf file](#)
- [Summary of Original Regulation Proposal \(1999-2000\) - 76 KB .pdf file](#)
- [Table of Comments from General Public - 485 KB .pdf file](#)
- [Detailed Comments from other than General Public - 220 KB .pdf file](#)

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It is free, and available for downloading to your computer from **Adobe**.



### What do the Phase 1 regulations do?

#### *This new set of regulations:*

- explains what public easements are (see 11 AAC 51.010);
- lists the types and widths of easement DNR deals with, including section-line easements (11 AAC 51.015-025);
- ensures that state land sales will automatically include access easements to streams and lakes above a minimum size, with smaller water bodies considered for easements case by case (11 AAC 51.035-045);
- sets out DNR's process for identifying RS 2477 rights-of-way (11 AAC 51.055);
- repeals the RS 2477 "certification" process and associated fees (11 AAC 51.020, etc.);
- provides standards for vacating easements (11 AAC 51.065);
- ensures that easements will be surveyed and the landowner will be notified before DNR authorizes road construction (11 AAC 51.100);
- ensures that landowners as well as easement users will have the right to appeal an easement decision that affects them (11 AAC 51.910);
- defines terms (11 AAC 51.990).

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### What changes did the Department of Law make?

The Department of Law made many revisions before approving the new chapter. Mostly these revisions were to move or reorganize clauses, but one major change was necessary. DNR had proposed two sections to provide "immunity" (legal protection against liability for accidents and injuries) for the state, for property owners whose land is crossed by an easement, and for volunteers who build or maintain a road or trail on an easement. Landowners and resource developers had told DNR they were worried about unfair liability lawsuits. That concern could

harm public access if it causes landowners to seek easement vacations, or prevents volunteers from building and maintaining trails. Unfortunately, the Department of Law concluded that only the Alaska Legislature can provide legal immunity, even though DNR previously had regulations on this topic (11 AAC 53.360-370).

Existing state laws offer some liability protection. AS 19.30.420 protects the state and municipalities on RS 2477 rights-of-way that are not part of the state highway system, but does not apply to other landowners or trail builders. AS 09.65.200 protects the landowner if an easement has no improvements other than a trail, an abandoned airstrip, or an unused road originally built for natural resource extraction. A bill passed in May 2001 by the Legislature, HB 127, protects volunteers who maintain an airstrip. However, these statutes have gaps. DNR will recommend passage of comprehensive legislation to fill in those gaps.

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## **What's next for Phase 2?**

*The Phase 2 regulations will tackle the following questions:*

- Which agency should manage use of section-line easements? What about use of section-line easements to install utilities such as telephone and power lines?
- Who manages access and utility easements within land DNR has subdivided in the past?
- How should DNR transfer easement management to other agencies or to a city or borough?
- For easements managed by DNR, what are the management details?
- Can people voluntarily maintain trails on public easements without needing a DNR permit?

DNR expects to begin public review of the Phase 2 regulations in the summer of 2001. Further information on that proposal will be available on this web site.

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