

11 AAC 51.100. Management of public easements, including R.S. 2477 rights-of-way

(a) The commissioner has management authority over the use of any R.S. 2477 right-of-way that is not on the Alaska highway system. Certain land use actions on R.S. 2477 rights-of-way, including road construction, may require a permit under [11 AAC 96.010](#), or other authorization by the department. Based on a written determination by the commissioner, the commissioner will, in the commissioner's discretion, close or restrict the use of an R.S. 2477 right-of-way over which the commissioner has management authority in order to

- (1) protect public safety;
- (2) protect the right-of-way and the servient estate against damage that may be caused by use during storms, floods, thawing conditions, or construction and maintenance operations; or
- (3) protect or manage other resources in or near the right-of-way.

(b) If the commissioner closes or restricts the use of an R.S. 2477 right-of-way under (a) of this section, the department will

- (1) post notice in a conspicuous place near the right-of-way of the closure or restricted use of the right-of-way and, at the department's discretion, place a barrier or obstruction on the right-of-way;
- (2) post signs in a conspicuous place near the right-of-way indicating the location of any alternative routes.

(c) Any decision made under (a) to close or restrict the use of an R.S. 2477 right-of-way may be appealed under [11 AAC 02](#).

(d) The commissioner and the commissioner of the Alaska Department of Transportation and Public Facilities, by agreement, will determine if an R.S. 2477 right-of-way managed under this section will be transferred to the Alaska Department of Transportation and Public Facilities or to a local government for management purposes.

(e) If an access use or access development activity on a public easement managed under [AS 38](#) may not occur without a permit under [11 AAC 96.010](#) or other authorization by the department, and if the permit or authorization sought is for new access construction

(1) that would displace or preclude a traditional means of access for a traditional outdoor activity on the easement, including construction of a road on a trail traditionally used for hiking or snowmachine travel, the department will provide public notice and an opportunity for comment of at least 14 days before deciding whether to issue the permit or authorization; or

(2) on an unsurveyed easement that crosses land not managed under [AS 38](#), the department will provide notice and a comment opportunity of at least 14 days to the owner of the land determined to be subject to the easement before deciding whether to issue the permit or authorization.

(f) Even if notice is not required under (e)(1) or (e)(2) of this section, the department may provide notice and a comment opportunity to the owner of the land subject to an R.S. 2477 right-of-way.

(g) If a permit or authorization is sought for new access construction as described in (e)(2) of this section, the department will require the permit applicant to survey the public easement, in order to show the relationship between property boundaries and that easement and to reduce the possibility of unintentional trespass. However, the department will not require a survey if the location of the public easement may readily be determined, and if a dispute does not exist regarding whose land the easement crosses. The survey is subject to approval by the department. The survey must be conducted by a surveyor, must show the relationship of the easement to the boundaries of the land it crosses, and must be performed to Class III standards under [11 AAC 53.110](#).

(h) The department or a person may complete a trail easement diagram showing the location of an existing trail or road. An applicant who is subject to (g) of this section may not use a trail easement diagram as a survey unless the trail easement diagram satisfies the requirements for a survey set out in that subsection.

(i) On land subject to a public easement managed under [AS 38](#), uses and activities by the landowner that are consistent with the landowner's property rights and that do not restrict public use of the easement do not require a permit under [11 AAC 96](#).

(j) If the state holds only a public easement, and another person holds the other interests in the land, the department will issue a permit under [11 AAC 96](#) only for uses and activities related to access.