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SEP 20 1996

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities
Office of the Commissioner

TO: Jane Anvik
Director, Division of Lands

DATE: September 19, 1996

TELEPHONE NO: 465-3900
FAX NUMBER: 586-8365

FROM: *Cheryl* M. Stoltzfus
Special Assistant

SUBJECT: Proposed Policy on RS
2477

This memorandum is in response to your memorandum of September 4, 1996 requesting comments on the RS 2477 Policy Paper dated September 4, 1996. I believe the proposal to distribute the draft policy for public review prior to the Governor's approval to be the correct strategy. To me, public comments prior to his approval will provide the Governor with the best information for him to form his policy and will lead to a better product in the end.

Prior to public release, I believe there are several corrections that will make the policy more understandable. The first is the vagueness of the phrase "usable width." I think a better way of expressing what we want to say is:

1. Usable Width

Recommended Policy

The surface area of an RS 2477 ROW to be managed as available available for use by the public will be determined by actual or historical use patterns.
Useable width shall not be prescribed by the legal definition

Under the next Policy (Management) one could read a conflict between the second and third sentences. It would be more accurate to start the second sentence with Until changed through an open public review process, management of an RS 2477 right-of-way should be consistent

Under the policy Abandonment/Vacation, third paragraph, please make the following changes:

Any RS 2477 right-of-way needed to construct a new highway or road for vehicular traffic that crosses private land

Also, add a new sentence at the end of that paragraph to say:

Current uses are not affected by this policy.

CHIEF R/W AGENT	
PRE AUDIT	
ENG. DRAWING	
APPROVALS	
RELATIONSHIP	
UTILITIES	
RETURN TO:	
FILE	

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The last paragraph of that section should be made consistent with the overall policy by adding a new sentence to read:

Changes in use shall be subject to public review prior to being changed.

In addition, in the last full paragraph, first sentence, where examples of public purposes served by RS 2477 are given, a more general "property access" would be important to include to capture inholdings in the list. Also in that paragraph, the second sentence should be modified to read:

- The state will assert the existence of RS 2477 rights-of-way in federal court on routes that can be documented to meet the criteria of the federal law and are not duplicative of other rights-of-way and/or useable section line easements.

Thank you for the opportunity to comment.

cc: Joe Perkins, Commissioner

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES

TO: RS 2477 Working Group
FROM: Jane Angvik, Division of Land
DATE: Sept. 4, 1996
SUBJECT: Proposed Policy on RS 2477

Jane Angvik

*Things whose timing
is a better pill to
swallow - but it
may be the pill
that saves RS 2477.
We should make it
clear that is not a
compromise position -
open to further
compromise.*

Attached is a revised policy statement about the RS 2477 rights-of-way. The issue of which rights-of-way to assert has been deleted from this draft, because it is proposed that questions of litigation should be determined internally. However, the concept of claiming 100 foot width in the assertion process is clearly stated.

It is also proposed that these policies be distributed for public review prior to approval by the Governor. After comments have been received, the policies and the public response would be submitted to the Governor for his consideration. The Governor would then be able to weigh the policy in light of public responses. If the response is negative, it is an agency proposal, not the Governor's proposal.

To summarize, the policies are:

Management

1. The usable width of the RS 2477 row should be determined by actual use patterns
2. The management of the row should be consistent with its past/and or present use including seasonal restrictions - ie) winter only or summer only.
3. RS 2477 rows can be asserted and if not necessary, can be vacated using established criteria. If a RS 2477 row which is needed to construct a highway crosses private land the state will negotiate a purchase price or use normal condemnation procedures.
4. Clarify what is, and is not a section line easement. If the section line is on:
private land, it only exists if it has been surveyed,
state land, it exists whether it has been surveyed or not,
federal land, it only exists if it has been surveyed prior to withdrawal and 1976.

Assertions

The state will assert the existence of RS 2477 rights-of-way on routes located on federal lands which are deemed to be part of a logical transportation network and that serve a public purpose. Assertions will claim 100 foot right-of-way width, as provided in statute.

If there are any technical or policy problems with this draft, please let me know by September 13th.

*We don't have the ball
benefit of a crystal ball
here - to see what the
best course of action
would have been.*

RS 2477 Policy Paper

September 4, 1996

What is an RS 2477?

Section 8 of the Mining Act of 1866 granted a public right-of-way across unreserved federal lands to guarantee public access as lands were transferred to state or private owners. The law stated:

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

It was codified as section 2477 of the Revised Statutes, what we now call "RS 2477." Rights-of-way were accepted under RS 2477 until its repeal in 1976 by the Federal Land Policy and Management Act (FLPMA).

Rights-of-way established under RS 2477 are still valid. To qualify as a valid right-of-way under RS 2477, (1) a route must have been established across public land when the land was vacant, unreserved, and unappropriated; and (2) the grant had to be accepted by either, (a) action by a public authority clearly expressing an intent to accept a right-of-way, or (b) by sufficient public use of the route.

Only federal courts have the authority to finally determine the validity of an RS 2477 right of way on federal land. However, state governments have management authority for the routes. To this end, the State of Alaska proposes the following policies to guide the management and use of RS 2477 rights-of-way in Alaska. The policies are provided for public review and comment.

Proposed Management Policies on RS 2477 Rights-of-Way

At the present time there is no clear state policy on the usable width, management, abandonment, or vacation of routes or how RS 2477 rights-of-way on private lands should be treated. Nor is there a state policy on public easements along section lines. The following proposals address these policy issues.

1. Usable Width

Recommended Policy

The usable width established for RS 2477 rights-of-way should be consistent with actual use patterns and the existing DOT/FP regulations, which provide for five different types of rights-of-way. Use shall not be prescribed by the legal definition of a right-of-way width for highways, which is defined by AS 19.10.015 to be 100 feet. Any proposed change in usable width or allowable use shall be subject to public review before change. This policy should be formalized through the adoption of regulations by DNR.

what does this say? does this outline management of the legal ROW?

2. Management

Recommended Policy

The State of Alaska has management authority over RS 2477 rights-of-way. Management of an RS 2477 right-of-way should be consistent with its past and/or present use, including seasonal restrictions, and be consistent with state regulations. Any change in management or seasons of use shall be subject to public review prior to being changed.

Current

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*we need to
sit down w.
discuss
ways
to
of
acquisition*

Only for program

3. Abandonment/Vacation

Recommended Policy

If an RS 2477 right-of-way has been legally established but has not been used in recent years, and there is no known need for the route in the future, it may be vacated using a normal right-of-way vacation process (AS 40.15). This includes public review. This will eliminate debate over whether the route was ever abandoned and give the public certainty about the route's future.

Criteria that will be used to determine whether a route should be vacated or how it should be managed include, but are not limited to: (a) land ownership (public vs. private land), (b) land classification, (c) current use patterns, (d) alternative access routes, and (e) practicality of use (particularly important for section line easements).

Any RS 2477 right-of-way needed to construct a highway or road for vehicular traffic that crosses private land will be acquired by the State through negotiated purchase or through normal condemnation procedures.

For other access across private land, alternative public right-of-way authority will be used if available. For example, if an adequate public right-of-way exists as a result of its identification under the Alaska Native Claims Settlement Act, Section 17(b), it will be used rather than claiming or asserting an RS 2477 right-of-way. Where alternative access exists, the RS 2477 right-of-way and/or section line easement may be asserted and immediately vacated at the same time in order to avoid conflicts.

For access across private land for use other than constructing a highway or road for vehicular traffic where the only public right-of-way that exists is one established as a result of RS 2477, the State of Alaska will assert ownership of the right-of-way and shall manage it consistent with past and/or present use. *changes in use will be subject to...*

4. Section Line Easements

Recommended Policy

Pursuant to territorial, and now state, statute, the legislature declared that a right-of-way exists on every section line in the state. There is considerable disagreement over whether this statutory dedication was sufficient to accept the RS 2477 grant on federal lands, and over whether the section line had to be surveyed to constitute an acceptance. In Alaska, land ownership should play a key role in resolving these questions.

If a Section Line Easement is located on:

Private Land - the easements only exist if surveyed and/or platted prior to conveyance or reservation by the United States or the State. Casual use is permitted, but no construction can occur without written authorization from the state after consultation with the land owner. Any private land owner can petition the state, or local platting authority, at any time to have the section line vacated if alternative and practical access exists.

*might apply to
conversion of
rights
of way*

*need to consider
value of 17(b) -
need to consider
a lot of factors
we could wind
up staying RW for
existing/constructed
improved/needed
-wifes for which
RW is 84100
on RS2477.*

*Kluksna Lake Rd
Tok River 12000
Ketchikan - Dahl Ck.
Id. 44000
-wifes - Ketchikan*

*44100
44100
44100
44100*

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 September 5, 1996
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State Land - all section line easements exists, surveyed or not. Casual use is permitted on all section lines - surveyed or protracted. No construction may occur until the section line is surveyed and authorization is received from the state following public review. Use, even casual use, may be subject to more intensive management within state legislatively designated areas such as parks, wildlife refuges and critical habitat areas.

Federal Land - the easements only exist if surveyed prior to withdrawal or reservation and prior to 1976. Casual use is permitted; however, no construction may occur without written permission from the state following public notice, and input from the federal land manager has been received.

This section line policy - on private, state and federal land - should be adopted as regulations which stress the management aspects, such as casual use and prohibition of construction.

Proposed Assertion Policy of RS 2477 Rights-of-Way on Federal Lands
Recommended Policy

The State of Alaska will assert the existence of rights-of-way located on federal lands which are deemed to be part of a logical transportation network and are in the public interest to protect because they serve a public purpose. The State of Alaska will assert the existence of RS 2477 rights-of-way in federal court and in such assertions will claim the statutory right-of-way width of 100 feet, as provided in AS 19.10.015. The usable width will be set by ^{state} management policy.

Examples of public purposes to be served include: routes to provide access to state land for recreational and/or developmental uses of resource or access to communities. The state will assert the existence of RS 2477 rights-of-way in federal court on routes that can be documented to meet the criteria of the federal law and are not duplicative of other rights-of-way/^{useable} and of section line easements. In August, 1995 DNR completed a research project that evaluated 1,548¹ potential RS 2477 rights-of-way. The results of this research found that:

558 routes appear to meet the criteria for RS 2477 rights-of-way.

16 routes do not qualify under RS 2477.

119 routes already have existing or parallel rights-of-way.

186 routes are duplicates of the same route with another name.

255 routes were inconclusive; all written research was completed but more evidence is still needed to decide if they qualify. These routes are very speculative in nature.

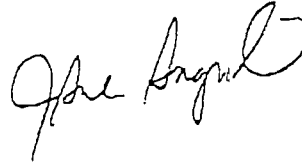
414 routes were deferred because evidence is unlikely.

1. Historic Trails Database & Map Atlas, August 1995, DNR

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES

STATE OF ALASKA
Division of Land

TO: RS 2477 Working Group
FROM: Jane Angvik, Division of Land
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September 4, 1996

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 Page 3

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