

John Bennell  
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JAM

DEPARTMENT OF NATURAL RESOURCES--Division of Land

To: Distribution

Date: January 8, 1993

RECEIVED R/W

JAN 20 1993

Phone: 762-2680

Northern Region DOT & PF

From: Jerome A Pape *JAP*  
Chief Cadastral Surveyor

Subject: Vacation of RS 2477

A suggestion was received regarding the rewrite of 11 AAC 53 that the vacation of RS 2477 rights of way be included in the section covering the vacation of section line easements. The logic being that there must be a vehicle for accomplishing this act and both have their origin in the 1866 mining law ( The section line easement vacation procedure has evidently already been used for this purpose once because of lack of any alternative). The suggestion while a logical one has left me feeling very uneasy because of the gut feeling they aren't the same "animal". I've had a hard time putting my finger on why I feel they are different although originating in the same law, but think I finally have.

Section line easements are determined by their location and the acceptance (of all section lines) of the federal offer of reservations for highway construction, are a set width and, in the case of state owned lands, have a statutorily created state easement over laying them. Because of soils condition and topography they may be impossible or impractical to use for the purpose for which they were reserved. Since they are laid out in one mile grids, it is often fairly easy to provide alternate access around portions that may vacated. Additionally, most section line easements that we receive requests to vacate are not used for access but are retained for future use. The ones that are vacated are generally done so as part of a subdivision process and alternate road systems are platted.

RS 2477's on the other hand are created not by location, but by usage. They have no designated width, but have a width determined by what has been used historically. The state is in the process of trying to identify and accept dedication of this access, but I am unaware of creation of any over laying state dedication on a universal basis. The routes must be specifically identified as fitting the RS 2477 category before the reservation can be asserted. They obviously are suitable for the purpose for which they are to be dedicated as they have achieved their stature as RS 2477's through usage. In many instances, they run for miles and were developed over time to serve a specific access need. In many instances they have become of special use to individuals or segments of the population and, by their very nature have, in many instances achieved historical status.

The foregoing attempt to collect my thoughts does not mean they should never be vacated, but I do think this is a much more

volatile subject than your typical section line easement vacation.

Both Denny Daigger and Jim McAllister have expressed the opinion that prior to any vacation action taking place it must first be established that the trail or road is in fact an RS 2477.

Because of the presumably useable nature of an RS 2477, the vacation should not become final until comparable alternate access has been constructed around the portion being vacated. This is going to require field inspection on DNR's part to confirm this has taken place.

RS 2477 access is reserved to the public at large. The newspapers used for advertising may be of wide enough circulation that present advertising procedures are acceptable, but because of the large areas served by some of these trails, the areas of posting of public notice may need to be increased. Additionally, there may be out of state owners of Alaska land whose land is far removed from the vacation area but still affected. There may even be need for a wider circulation of notice among government agencies that an RS 2477 is proposed to be vacated.

I believe any advertising should state that it is a portion of an RS 2477 that is proposed to be vacated and must be very specific as to just what rights are being vacated.

It is assumed we will not be dealing with vacation requests other than from the owners or managers of the affected land.

Is this an issue requiring input from the attorney general?

If you have any comments on the foregoing or specific ideas of how this type vacation should be handled, please drop me a line by January 15 or give me a call at 762-2680.

Distribution: Ron Swanson  
MTM  
George Bernard  
Norm Johnson  
Dave Pott  
Jerry Sherbahn  
Denny Daigger  
Jim McAllister  
John Bennett, DOT/PF  
Dan Beardsley, DOT/PF



# MATANUSKA-SUSITNA BOROUGH

## PLANNING DEPARTMENT

350 East Dahlia Avenue, Palmer, Alaska 99645-6488

(907)745-9833 • FAX (907)745-9876

September 14, 1999

OCT 07 1999

The Honorable Scott Ogan  
State Representative  
600 West Railroad Avenue  
Wasilla, AK 99654

RE: Telephone message of 8/17/99

Dear Representative Ogan:

This letter is in response to your voicemail message of August 17, 1999 to one of my employees, David Post. In your message you asked whether David was aware of the possibility to vacate right-of-ways asserted in Senate Bill 180. I want to reassure you that the Planning Department, including Mr. Post, is aware that vacating a R.S. 2477 right-of-way is allowed under certain circumstances described in Senate Bill 180.

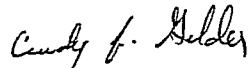
As your phone call may have related to access to both Wolverine Lake and the Wolverine Glacier Trail through the Moore's property, I want to share my understanding of some of the history and solutions identified. In the winter of 1997/98 the Moores proposed an alternative route be dedicated. Unfortunately, as noted in the attached letter from the Department of Fish and Game, the proposed alternative route does not meet the Senate Bill 180 standard for alternative access allowing vacation of the existing route. The proposed alternative trail easement is only 15 feet wide and does not allow for all uses currently able to use the existing trail through the Moores property.

I understand that the Moores, the Alaska Department of Fish and Game, and the Alaska Department of Natural Resources are still exploring alternatives which would satisfy everyone's concerns. The 1994 Legislative capital budget included an appropriation of \$10,000, which lapses on June 30, 2000, to the Lazy Mountain Community Council for "Lazy Mountain trail identification and survey". The borough, in cooperation with the Lazy Mountain Community Council, is happy to support an option that would definitively provide public access by supplying previously appropriated grant funding.

Honorable Scott Ogan  
September 14, 1999  
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In closing, I recognize how important it is for the borough and our legislators to work cooperatively to address complex issues. I hope that the best course of action can be identified and implemented. If you have any other comments or questions please contact me at 745-9850.

Sincerely,



Cindy J. Gilder  
Planning Director

Enclosures:

June 28, 1999 letter from Department of Fish and Game

cc:

Michael J. Scott, Borough Manager

Ron Swanson, Community Development Director

David Post, Planner II

Dick Mylius, Division of Lands, Alaska Department of Natural Resources

✓ Tina Cuning, Alaska Department of Fish and Game

Chickaloon Moose Creek Native Association

Mental Health Trust Authority

Kevin and Celeste Moore

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

TONY KNOWLES, GOVERNOR

State-Federal Issues;  
ANILCA Program

333 Raspberry Road  
Anchorage, AK 99518-1599

PHONE: (907) 267-2248

FAX: (907) 267-2472

June 28, 1999

Kevin and Celeste Moore  
HC 04 Box 9247-K  
Palmer, Alaska 99645

SUBJECT: Wolverine Creek Trail

Dear Mr. And Mrs. Moore:

In January of this year, Alaska Department of Fish and Game staff reviewed a proposal submitted by the Mat-Su Borough to gain public access to Wolverine Lake and Wolverine Creek Trail by obtaining an easement along the eastern boundary of your property and acquiring an easement or fee title to adjacent land from the Mental Health Trust. Because access to the lake and trail is important to sport hunters and fishermen, the Department of Fish and Game was asked to contribute funds towards the purchase of the Mental Health Trust Land.

It would be inappropriate for the state to expend its limited financial resources to purchase additional state land because the Wolverine Creek Trail already provides public access to the area. The Wolverine Creek Trail is a state held right-of-way accepted by public use under federal law (Revised Statute 2477) before the trail and surrounding lands were in private ownership. This trail has been in consistent public use since the early 1950s and is specifically identified as a public access route in AS 19.30.410. The trail spur connecting Wolverine Creek Trail to Wolverine Lake has a similar history of public use and is also a state right-of-way. The Department of Natural Resources identified this route under the procedures set forth in AS 19.30.400(b).

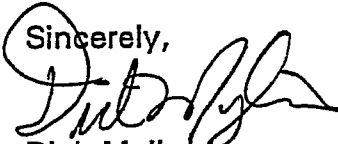
While the state remains open to discussions about viable alternatives, it is essential to maintain legal access for hunters and fishermen that use the trail to access Wolverine Lake and the Chugach Mountains. Until such time as the existing alignment is legally altered, the current road must remain available for public use. By law, the state cannot vacate a public right-of-

way unless there is a comparable alternate route that provides equivalent access to satisfy all current and reasonably foreseeable uses (AS 19.30.410). The alternative access you have discussed with the Borough would not satisfy this standard. Any alternative must be constructed and allow equivalent access by motor vehicle.

On a recent visit to the area, Department of Fish and Game staff noted that the gate which previously blocked access onto Wolverine Creek Trail has been removed. However, the positioning of your "no trespassing" signs is misleading and will likely intimidate any conscientious member of the public who has a right to use the trail. We request that you immediately remove any signs located on or near the trail that imply the trail is closed to the public. We are willing to work with you to develop signage that helps prevent trespass on your property while still protecting the public's access rights.

Thank you for your assistance in this matter. Please contact Robin Willis (267-2329) if we can be of assistance.


Sincerely,



Dick Mylius

Division of Lands

Alaska Department of Natural Resources



Tina Cuning

Program Manager

Alaska Department of Fish and Game