

TO: Director's Policy File
81-37

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SUBJECT: Use of Established Right-of-Way Easements

Background: To eliminate conflicts and consolidate the state's policy on use of previously established public right-of-way easements on state lands policy memos 80-4, 80-4a and 80-19 are repealed and replaced by this policy memo. Policy memos 80-4, 80-4a and 80-19 should be removed from your policy file and disregarded.

Situation: *Revised State* RS 2477 public right-of-way easements exist by reason of the prior right granted to individuals to construct public highways on and across unreserved public (federal) land. (In this policy, "highway" refers to a public way capable of being used for transportation of people or goods by any mode common to the locale; i.e. sled, pack animals, tram or motorized vehicle.) This right derives from the basic Congressional grant 43 USC 932 (now repealed). The Territory and State of Alaska accepted this Congressional offer by legislative action at various times, establishing section line right-of-way easements of specified widths not only on the public unreserved (federal) lands but also on territorial and state lands. In response to requests and applications, territory and state land offices have also established other public right-of-way easements and, in some cases, have acquired grants from others for public highway use.

The dedication of an easement may be accomplished by the construction of a RS 2477 highway, the acceptance of the Congressional offer by the legislature, or the establishment or the acquisition of other right-of-way easements. The dedication constitutes the disposal action insofar as it governs further use of the right-of-way easement by the public.

Repeal of RS 2477 (43 USC 932) does not extinguish the right-of-way easements previously accepted. The disposal or conveyance of lands also has no effect on the easement. The 1976 repeal of RS 2477 only makes future acceptance inoperative as to federal lands which first become vacant and unreserved after 1976.

The attached sheet "APPLICATION OF SECTION LINE EASEMENTS" provides a synopsis of the history of RS 2477 and section line right-of-way easements.

Policy: 1. Does the public have the right to construct or reconstruct roads on section lines, RS 2477's, and other public right-of-way easements established or acquired by the territory or state?

YES! It is the policy of the Division of Forest, Land and Water Management that anyone does have the right to construct or reconstruct roads or rails within these existing right-of-way easements without permit and regardless of ownership, unless the right-of-way has been vacated.

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2. When a member of the public desires to enter and construct a public road, is the Division of Forest, Land and Water Management responsible for determining and advising whether a right-of-way easement exists?

NO! This determination is the responsibility of the party seeking entry on the land. This division will give state land ownership status only, that is, the date of state selection, patent, disposals of state interest, and any easements created by territorial or state land offices. Vacations must be checked with the appropriate office.

3. Does the absence of a monumented section line preclude the existence of the right-of-way easement?

NO! Section line right-of-way easements are reserved even in the absence of the monumentation but cannot be utilized until the section lines are fixed and established in accordance with the rectangular system portrayed

4. Does a public utility have the right to construct improvements on these right-of-way easements?

YES! It has been determined by an Alaska Court that section line right-of-way easements may be so utilized as a subordinate use, but cannot interfere with later public road or highway construction. Any use within an easement reserved under RS 2477 must be within the boundaries between outer ditch limit to outer ditch limit of the existing road. To assure uniformity, public utilities may also use public road right-of-way easements established by the territory or state and those acquired from others unless specifically prohibited by the grant conveying the right-of-way easement. However, AS 19.25.010 provides that the use of state right-of-way easements by public utilities must be in accord with regulations prescribed by the Department of Transportation and Public Facilities and must be authorized by a written permit issued by that department.

5. What rights of ownership accrue to the fee owner of land underlying these right-of-way easements?

Fee ownership of the encumbered land grants to the owner the following:

- A. A subordinate right to use of the right-of-way easement subject to any future public highway, road or utility construction; and
- B. Ownership of materials (timber, sand, gravel) within the easement. The constructor of a public roadway may, without the express consent of the fee owner, utilize any materials within the right-of-way easement for construction of roadbed or ditches at no charge. Unnecessary clearing or removing materials to areas outside the easement utilizing more of the right-of-way than is actually necessary without the fee owners consent, is an actionable cause at law.

APPLICATION OF SECTION LINE EASEMENTS

<u>Date</u>	<u>Federal Land or Land Patented By the U.S.</u>	<u>State or Territorial Land or Land Acquired From the State or Territory</u>
July 26, 1866 (43 USC 932 RS 2477) To April 6, 1923	No section line easement although RS 2477 applied to all vacant federal land; width of easement determined by width of road constructed.	No. Alaska become a territory on August 24, 1912.
April 6, 1923 (Territory accepts/dedicates) To January 18, 1949	Yes; 66 feet wide along section lines plus RS 2477 or remainder of vacant land.	Yes; 66 feet wide.
January 18, 1949 (Repeal of laws excludes) To March 26, 1951	No section line easement, although RS 2477 applied to all vacant federal land.	No.
March 26, 1951 (Territory accepts/dedicates only as to Territory land) To March 21, 1953	No section line easement, RS 2477 still applied.	Yes; 100 feet wide.
March 21, 1953 (Acceptance/dedication made to include both Federal & Territory) To March 28, 1975	Yes, 66 feet wide <u>if</u> land was <u>vacant</u> and unreserved.	Yes; 100 feet wide.
March 28, 1975 (5418 reserves all remaining vacant public land) To Present	No. No Federal land was vacant after March 28, 1975 and the law (RS 2477) was repealed on October 21, 1976.	Yes; 100 feet wide. Present codification is AS 19.10.010.

932. Right of way for highways. The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted. (R.S. - 2477.)

Summary: District personnel should: 1. Pursuant to AS 19.25.010, direct the public to check with the Department of Transportation and Public Facilities. 2. Direct the public to contact the Department of Fish and Game if any stream crossings are involved to ascertain the necessity for a Title 16 permit. 3. Where the state is the underlying fee owner, require that any usable timber or material severed from the land and not used within the roadway be stockpiled within the right-of-way easement at accessible points or ensure that timber is otherwise used and direct that slash, roots and other waste vegetative materials be burned or buried within the right-of-way easement. 4. Urge that clearing activities within the right-of-way easement be limited to the minimum width necessary.