

#7.2

\*\*\* DRAFT \*\*\* DRAFT \*\*\* DRAFT \*\*\* DRAFT \*\*\* DRAFT \*\*\*  
DRAFT \*\*\*

## RS 2477 RIGHTS-OF-WAY POLICY AND PROCEDURES

Revised Statute 2477  
"THE RIGHT OF WAY FOR THE CONSTRUCTION OF HIGHWAYS OVER  
PUBLIC LANDS, NOT RESERVED FOR PUBLIC USES, IS HEREBY  
GRANTED."

### Introduction

This simple phrase became law in 1866, ten months before Alaska was purchased from Russia. It was the first comprehensive mining law for land owned by the United States. Before 1866 miners had entered, settled on, and used public domain land without benefit of federal statutory protection. Thus RS 2477 insured that miners, homesteaders, and the general public would have access rights across otherwise unreserved public lands to reach their claims and improvements.

RS 2477 was only one of many authorities which provided for access across Federal lands. However, the RS 2477 grant was unique among these access authorities. It was a congressional grant to the public which did not require any action on the part of any Federal agency. While the grant was "offered" by Congress, a right-of-way was not recognized until there was an "acceptance" of the offer and thereby a contract was completed. Courts have ruled that the scope of the offer is defined by Federal law while the acceptance is defined by State law, an instrumentality of the State, or by a public user.

### State Policy

The State of Alaska, in order to fulfill its "public trust" responsibilities, has developed and shall implement a coordinated statewide policy that defines state goals and responsibilities for the identification and recognition of acceptance, of historic rights-of-way established under RS 2477.

Therefore it is the policy of the State, as implemented by the provisions contained herein, to address the acceptance of RS 2477 rights-of-way in the following manner:

1. Identify, locate, and assert acceptance of all known rights-of-way established under RS 2477.
2. Manage the use of accepted, and established, rights-of-way based on the relevant laws and regulations of the State of Alaska.

This policy will be implemented in a manner that respects private land and property rights while resolving access uncertainty and mitigating conflicts

**\*\*\* DRAFT \*\*\* DRAFT \*\*\* DRAFT \*\*\* DRAFT \*\*\* DRAFT \*\*\*  
DRAFT \*\*\***

between this State action to recognize the acceptance of rights-of-way grants, established under RS 2477, and private land owners.

It is further the policy of the State of Alaska that recognized rights-of-way established by RS 2477 are property granted to the public by the Federal Government and these rights-of-way can not be forfeited.

### **Procedures**

The State of Alaska, acting through the Department of Natural Resources (DNR), will use the following procedures to guide acceptance of RS 2477 rights-of-way (ROW).

The DNR shall compile and organize the information and evidence to document acceptance of all possible RS 2477 ROW. These procedures shall also provide a process whereby private individuals or agencies of the public may assert acceptance of a RS 2477 ROW.

The DNR's RS 2477 ROW Notice of Acceptance Assertion process will contain the following information:

1. The NAME of the transportation route;
2. The STARTING location of the route;
3. The END location of the route;
4. The DATE/TIMEFRAME the route was first used;
5. A GENERAL GEOGRAPHIC DESCRIPTION of route;
6. Any or all HISTORICAL ACCOUNTS that refer to or recognize the route;
7. A list of any KNOWN LIVING PERSONS with knowledge of historical use of the route; and,
8. The NAME OF THE ENTITY REQUESTING the state to assert acceptance of the ROW.

The DNR will be the single point of contact for private individuals or agencies of the public to notify the State of Alaska of prior acceptance of RS 2477 ROW. DNR will be responsible for coordinating the State's acceptance of RS 2477 ROW(s).

Standard operating procedure for DNR upon receipt of an RS 2477 ROW Notice of Acceptance Assertion, will be to establish a case file and assign the file a number. This case file shall subsequently become the administrative record used by the State in ROW management decisions, arbitrations, and/or in defense of the assertion that the federal grant had been previously accepted. In instances where defense of the grant must take place, it is important that the case file contain the historic evidence to substantiate the acceptance of the grant. The DNR will gather all available information concerning the notice of assertion and place this within the case file.

DNR will provide the case file a written acceptance determination, and DNR will copy the entity filing the notice, and the appropriate land owners. The

**\*\*\* DRAFT \*\*\* DRAFT \*\*\* DRAFT \*\*\* DRAFT \*\*\* DRAFT \*\*\*  
DRAFT \*\*\***

acceptance determination will be the certification of the ROW. Criteria for this determination follows:

1. Identification of present land ownership status and verification of the routes existence during that period of time when the subject land was "unreserved public land".
2. Identification of positive acts or sufficient evidence to support a finding that the route qualifies as an RS 2477 ROW. Such positive acts or evidence, may be shown by records as to the original purpose of the route, the location at time of acceptance, the type and frequency of public use, public records or money expended on the route, on-the-ground verification that the route exists, evidence of preexisting construction and historical documentation (i.e. maps, aerial photographs, newspaper/periodical references, Alaska Road Commission reports and archival records, Alaska Territorial Highway Engineering Reports and archival records, U.S. Bureau of Public Roads reports and archival records, U.S.G.S. records of geological exploration, U.S. Bureau of Mines records of mine operations, and documents of local, state and federal agencies in Alaska.)

In the case where the ROW grant now crosses private lands, and there has been no previous acceptance of the ROW grant, the DNR will, within its lawful authority, mitigate impacts to the private land owner in the best interest of the people, and to the State of Alaska.

It is the position of the State that federal agencies should also note accepted RS 2477 ROW grants on applicable federal land records.

Acceptance of the ROW grant is a determination that the State will defend the assertion of acceptance from adverse claims. The State may proceed to initiate quiet title action or seek declaratory judgement from the court when necessary.

**Management**

DNR will manage all RS 2477 ROW(s) asserted by the state except those in which the State has invested resources to develop a highway or road for public use. RS 2477 ROW(s) shall be managed as:

1. OFF SYSTEM ROADS (17 AAC 05.030)
  - Trails
  - Basic Access Roads
  - Pioneer Roads
  - Community Roads
2. DESIGNATED STATE ROADS; or
3. FEDERAL-AID HIGHWAY SYSTEM ROADS.

If a validated RS 2477 ROW is subsequently developed as a road or highway, management responsibility will be transferred from DNR to DOT/PF, consistent with the policy of this section.

**\*\*\* DRAFT \*\*\* DRAFT \*\*\* DRAFT \*\*\* DRAFT \*\*\* DRAFT \*\*\*  
DRAFT \*\*\***

In cases, where Alaska statute has granted land management authority to a state agency other than DNR or DOT/PF, efforts may be made by DNR to assume management responsibility of the land contained within the ROW. The standard ROW width is 100 feet.

The State may enter into cooperative agreements with contiguous landowners or with other parties to manage use of, or construction upon, RS 2477 rights-of-way, but the State cannot relinquish ownership. A certification of acceptance decision by the State or an assertion of acceptance filing, does not constitute and may not be construed as a requirement that the State accept maintenance or construction responsibility. Nor may it be construed as assumption of liabilities by the State.

Notwithstanding other provisions of this section, management authority over valid RS 2477 ROW(s) shall be transferred to a municipality when requested if management of the ROW by the municipality does not conflict with other State purposes.

DOT/PF and DNR will adopt regulations to provide for management of rights-of-way granted under RS 2477.