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WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

September 25,

The Honorable Harold C. Heinze
Commissioner
Department of Natural Resources


The Honorable Frank G. Turpin
Commissioner
Department of Transportation and Public Facilities

Dear Commissioner Heinze and Commissioner Turpin,

In furtherance of the State of Alaska's commitment to fulfill its "public trust" responsibilities, I have determined that the Department of Natural Resources and the Department of Transportation and Public Facilities should move with all speed to adopt regulations, consistent with this administration's policy on regulations, to implement policy/procedures to carry out RS 2477 Right-of-Way assertions.

I am therefore directing Lieutenant Governor Coghill to take whatever action he deems necessary to ensure that these regulations reflect the specific policy and procedures the Lieutenant Governor and I have discussed.

I am placing a high priority on this project, and expect your support and cooperation.


Walter J. Hickel
Governor

cc: Lieutenant Governor Coghill

R.S. 2477 Rights-of-Way
Alaska State & Federal 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."

STATE POLICY

1. Locate and validate all existing rights of way established under RS 2477.
2. Manage rights of way.
3. Set procedures for individuals and entities to assert RS 2477.

PROCEDURES

DNR-document RS 2477s:

1. Name
2. Start and End
3. Date/Time Frame
4. General Geographic Description
5. Historical Accounts
6. Known Living Persons
7. Requesting Entity

DNR will serve as the state agency for individuals or public agencies concerning possible RS 2477 ROW.

DNR Criteria:

1. Identification of land ownership and verification of supporting evidence.

MANAGEMENT

DNR will manage all RS 2477 ROWs except those assigned to DOT as follows:

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

**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 part of 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 to address the acceptance of RS 2477 rights-of-way in the following manner:

1. Locate, validate and assert acceptance of all existing 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.
3. In addition to State assertion and acceptance, develop a procedure for private individuals and other public entities to assert acceptance of RS 2477 rights of way (ROW).

This policy will be implemented in a manner that respects private

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land and property rights while resolving access uncertainty and mitigating conflicts 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 rights granted to the public by the Federal Government and these rights-of-way can not be relinquished or disposed of except as provided by law.

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:

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 an RS 2477 ROW.

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

1. The NAME of the transportation route;
2. The STARTING AND ENDING location of the route;
3. The DATE/TIMEFRAME the route was first used;
4. A GENERAL GEOGRAPHIC DESCRIPTION of route;
5. Any or all HISTORICAL ACCOUNTS that refer to or recognize the route including the expenditure of public funds;
6. A list of any KNOWN LIVING PERSONS with knowledge of historical use of the route; and,
7. The NAME OF THE ENTITY REQUESTING the state to validate and assert acceptance of the RS 2477 ROW.

DNR will be the State agency for private individuals or public agencies concerning possible prior acceptance of an RS 2477 ROW. DNR will be responsible for coordinating the State's review, identification and acceptance of RS 2477 ROW(s).

DNR, upon receipt of an RS 2477 ROW Notice of Validation and Assertion, will establish a case file and assign the file a number. This case file shall become the administrative record used by the State in all ROW decisions, arbitrations, and/or in defense of the assertion that the federal grant had been accepted. In instances where defense of the grant may take place, it is important that the case file contain

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the historic evidence to substantiate the acceptance of the grant. DNR will gather all available information concerning the notice of assertion and place this within the case file.

DNR will promptly render a written acceptance determination with respect to each RS 2477 ROW assertion. DNR will provide a copy of the written acceptance determination to the entity filing the notice, and the appropriate land owners. Criteria for rendering the acceptance determination shall include:

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 and verification 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 one or more of the following records: Historical records as to the original purpose of the route, the original location, the type and frequency of public use, public records or money spent on the route, on-the-ground verification that the route exists, evidence of preexisting construction and historical documentation. (e.g., 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 RS 2477 ROW grant may now cross private land, and there has been no previous acceptance of the ROW grant, DNR will, within its authority, try to mitigate impacts to the private land owner in a manner consistent with State law.

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

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necessary.

MANAGEMENT

The standard RS 2477 ROW width is 100 feet. DNR will manage all RS 2477 ROW(s) validated and asserted by the state except those where investment has been made to develop a public throughfare in which case management shall be by DOT/PF. RS 2477 ROW(s) under the management authority of DOT/PF 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 and asserted RS 2477 ROW managed by DNR is subsequently developed as a throughfare, management responsibility will be transferred from DNR to DOT/PF.

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 State may enter into cooperative agreements with contiguous landowners or with other parties for the management and use of RS 2477 rights-of-way, but the State shall not relinquish ownership except as allowed for by law. A certification of acceptance decision by the State or an assertion of acceptance, 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) may be transferred to a municipality when requested if management of the ROW by the municipality does not conflict with other State purposes.

United States Department of the Interior
Bureau of Land Management
Alaska State Office
222 W. 7th Avenue, #13
Anchorage, Alaska 99513

2800 (932)
April 2, 1990

Instruction Memorandum to: AK 90-154
Expires: 3/30/91

To: DMs

From: State Director, Alaska

Subject: Access Across Public Lands to State Mining Claims

In an attempt to resolve the issue of miners accessing State mining claims by crossing public lands, we have made an informal agreement with the State Department of Natural Resources (DNR) to cover the situation wherein the miner is using an old trail which historically has been used for access to an area.

If you believe that the access route currently being used by a miner could qualify as an RS2477 route, you should contact Regional Director, DNR to determine the State's willingness to file an assertion under RS2477. If the State declines to file such an assertion, you will continue to issue appropriate permits and to charge rentals in accordance with our existing regulations.

When the State files an RS2477 Assertion which meets existing manual criteria, you will assure that the trail is noted on the BLM status plats in accordance with BLM Manual 2301.46B1. The width of an RS2477 trail or road held or maintained by the State or a municipality is that which is specified in for the particular type of road or trail in the State Statutes. (If the way has been formally accepted by the State, this is normally 100 feet.)

The State acknowledges the need to begin a program of RS2477 assertions; however, they lack the funding/manpower for a large scale program. Thankfully they are willing to work with us on a case-by-case basis to resolve a particular access issue.

A copy of the existing Departmental policy covering RS2477 assertions is attached for your additional information. If you have any questions concerning this matter, please contact Lillienne Gibbons, in the State Office, Branch of Land Resources (932) at 271-3370.



DD for Lands & Renewable Resources

Attachment:
Secretarial Policy Statement

801 - RIGHTS-OF-WAY MANAGEMENT

Departmental Policy Statement, RS 2477



U.S. SECRETARY OF THE INTERIOR
WASHINGTON

Memorandum

To: Secretary

From: ~~Assistant~~ ^{See Susan Recto} Assistant Secretary for Fish and Wildlife and Parks
Assistant Secretary for Land and Minerals Management

Subject: Departmental Policy on Section 6 of the Act of July 26, 1866, Revised Statute 2477 (Repealed), Grant of Right-of-Way for Public Highways (RS 2477)

Although RS 2477 was repealed nearly 12 years ago, controversies periodically arise regarding whether a public highway was established pursuant to the congressional grant under RS 2477 and the extent of rights obtained under that grant. Under RS 2477, the United States had (has) no duty or authority to adjudicate an assertion of application. However, it is necessary in the proper management of Federal lands to be able to recognize with some certainty the existence, or lack thereof, of public highway grants obtained under RS 2477.

With the passage of the Federal Land Policy and Management Act, the Bureau of Land Management (BLM) developed procedures, policy, and criteria for recognition, in cooperation with local governments, of the existence of such public highways and notation to the BLM's land records. This has allowed the BLM to develop land use plans and to take appropriate management decisions that consider the existence of these highway rights.

Issues have recently been raised by the State of Alaska and others which question not only the BLM policy but also the management actions by other bureaus within the Department. We have had the BLM review and report on the various issues and concerns (Attachment 1) and consulted with the State of Alaska, the BLM, the Fish and Wildlife Service, and the National Park Service.

We believe that the land management objectives of the Department will be improved with adoption of a Departmental policy and recommend that the attached policy (Attachment 2) be adopted for Departmentwide use.

Approve: Donald Paul Model Disapprove
Date: DEC 27 1988 Date:

Attachments: 1--RS 2477 Policy
2--BLM Report

Cooperating the United States Constitution

2801 - RIGHTS-OF-WAY MANAGEMENT

Departmental Policy Statement, RS 2477

Width:

For those highway R/Ws in the State, county, or municipal road system, i.e., the R/W is held and maintained by the appropriate government body, the width of the R/W is as specified for the type of highway under State law, if any, in force at the time the grant could be accepted.

In some cases, the specific R/W may have been given a lesser or greater width at the time of creation of the public highway than that provided in State law.

Where State law does not exist or is not applicable to the specific highway R/W, the width will be determined in the same manner as below for non-governmentally controlled highways.

Where the highway R/W is not held by a local government or State law does not apply, the width is determined from the area, including appropriate back slopes, drainage ditches, etc., actually in use for the highway at the later of (1) acceptance of the grant or (2) loss of grant authority under RS 2477, e.g., repeal of RS 2477 on October 21, 1979, or an earlier removal of the land from the status of public lands not reserved for public uses.

Abandonment:

Abandonment, including relinquishment by proper authority, occurs in accordance with State, local or common law or Judicial precedence.

Responsibilities of Agency and Right-of-Way Holder:

This policy addresses the creation and abandonment of property interests under RS 2477 and the respective property rights of the holder of a R/W and the owner of the servient estate.

Under the grant offered by RS 2477 and validly accepted, the interests of the Department are that of owner of the servient estate and adjacent lands/resources. In this context, the Department has no management control under RS 2477 over proper uses of the highway and highway R/W unless we can demonstrate unnecessary degradation of the servient estate. It should be noted, however, that this policy does not deal with the applicability, if any, of other federal, state, and/or local laws on the management or regulation of R/Ws reserved pursuant to RS 2477.

Reasonable activities within the highway R/W are within the jurisdiction of the holder. As such, the Department has no authority under RS 2477 to review and/or approve such reasonable activities. However, review and approval may or may not occur, depending upon the applicability, if any, of other federal, state, or local laws or general relevance to the use of a R/W.

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2. Examples of Casual Use. Casual use may include the following activities and practices:

- a. Recreation activities such as use of roads for hunting and sightseeing. This does not include driving in areas where vehicle use is prohibited.
- b. Domestic uses or activities associated with managing ranches, farms, and rural residences includes trucking of products and use of support vehicles.
- c. Ingress and egress on existing roads and trails.
- d. Activities necessary to collect data for filing a right-of-way application such as vehicle use on existing roads, sampling, marking of routes or sites, including surveying or other activities that do not unduly disturb the surface or require the extensive removal of vegetation.
- e. Minor activities or practices that have existed over a period of time without a grant and without causing appreciable disturbance to the public land resources or improvements.

B. Revised Statute 2477 (RS 2477). (See Departmental Policy Statement, RS 2477 in appendix 3.) The Act of July 26, 1866, RS 2477, repealed October 21, 1976, (formerly codified at 43 U.S.C. 932) provided: "The right of way for the construction of highways over public lands, not reserved for public use, is hereby granted." Acceptance of the grant occurred when a public highway was constructed on unreserved public lands. Holders of such rights-of-way shall be encouraged to have them acknowledged by having the BLM note the right-of-way on the records (MTP/ALMRS) in the same manner as other existing rights-of-way.

1. Criteria for Identification of RS 2477 Public Highway Rights-of-Way. Three conditions must have occurred before October 21, 1976 (date of repeal) for BLM to acknowledge the existence of an RS 2477 right-of-way; the lands involved must have been public lands, not reserved for public uses, (called unreserved public lands) at the time of acceptance; some form of construction of the highway must have occurred; and the highway so constructed must be considered a public highway.

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a. Unreserved Public Lands.

(1) Public lands of the United States that were open to the operation of the various public land laws enacted by Congress are considered unreserved public lands. Lands that were reserved or dedicated by an Act of Congress, Executive Order, Secretarial Order, or, in some cases, classification actions authorized by statute, were not subject to RS 2477 during the existence of the reservation or dedication. Likewise, lands preempted by settlers under the public land laws or located under the mining laws were not subject to RS 2477 during the pendency of the entry, claim, or other. The general withdrawals by Executive Orders 6910 and 6964 are not considered to have removed public lands from unreserved status.

(2) Between 1866 and 1976 it is possible that a single parcel of land was subject to and not subject to RS 2477 numerous times through various land status changes. Thus, a highway initiated while land was reserved might subsequently qualify under RS 2477 if the conditions were later met when the land returned to the status of unreserved public lands. Appropriate status must be checked relative to any highway being considered for acknowledgement.

b. Construction.

(1) Construction must have occurred, or have been initiated (actual construction must have followed within a reasonable time), while the lands were unreserved public lands. Construction is a physical act of readying the highway for use by the public according to the available or intended mode of transportation - foot, horse, vehicle, etc. Removing high vegetation, moving large rocks out of the way, or filling low spots, etc., may be sufficient as construction for a particular case. Road maintenance or the passage of vehicles by users over time may equal construction.

(2) Where construction was initiated by survey, planning, or pronouncement by public authority while the lands were unreserved public lands, actual construction could occur within a reasonable time even if the status of the land changed. Reasonable time must be determined in accordance with the specific conditions, i.e., one or two construction seasons for a minor county road, perhaps 3 to 5 years for a Federal-aid highway.

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c. Public Highway. A public highway is a definite route or way that is freely open for all to use for the type of use intended. A toll road may be a public highway if the only limitation is the payment of the toll by all users. Roads or ways that have had access restricted to the public by locked gates or other means are not considered public highways. The inclusion of a highway in a State, county, or municipal road system constitutes it being a public highway. Absent evidence to the contrary, a statement by an appropriate public body that the highway was and is considered a public highway will be accepted.

NOTE: Appropriate local law must be considered in determining what constitutes a public highway; some jurisdictions allow or permit a public highway to exist with the general public; others may require a formal resolution by the State, county, or municipality adopting the road as a public highway.

2. Acknowledgment. Acknowledgment of the existence of an RS 2477 highway right-of-way is an administrative action and is not subject to appeal to the Interior Board of Land Appeals. Where conditions exist on public lands to support the acceptance of the Congressional grant, the Authorized Officer will issue a letter of acknowledgement and treat the highway as a valid use of the public lands. Where the evidence does not support acceptance, the Authorized Officer will inform the asserter, if any, that BLM does not recognize a highway. (Again, this is not a rejection and carries no right of appeal.)

3. Documenting RS 2477 Rights-of-Way. Minimal documentation, either submitted by the asserter/holder or developed by BLM, consists of (1) map(s), survey(s), aerial photography, or similar from which the location can be determined; (2) descriptive information to show that the highway was constructed on unreserved public lands; (3) information on public highway status; (4) the name and address of the asserter/holder, if known; and (5) where acknowledged by BLM, a copy of the acknowledgement letter to the holder or, where holder is unknown, a memorandum for the file

a. For acknowledged RS 2477 rights-of-way, a case file must be established, a serial number assigned, and the official records noted. For State, county, or municipal RS 2477 rights-of-way, a single case file and serial number may be established for the individual entity (State of Idaho, Bingham County, Idaho, etc.) regardless of the number of separate RS 2477 rights-of-way held by that entity.

b. Where the authorized officer refused to acknowledge an RS 2477 right-of-way, a case file need not be established. However, discretion is advised. In controversial cases or where the material upon which the decision was based may be unrecoverable, establish a case file, assign a serial number, and close the case 30 days after the letter refusing to acknowledge the right-of-way has been issued.

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4. Management Issues. Reasonable activities within the RS 2477 right-of-way are within the jurisdiction of the holder. These include, but are not necessarily limited to, maintenance, reconstruction, upgrading, and the like. Under RS 2477 BLM has no authority to review and/or approve such reasonable activities. BLM's concern is whether such activities are confined within the boundaries of the right-of-way or whether such activities are so extreme that they will cause unnecessary degradation of the servient estate. Activities beyond the boundaries may require a right-of-way or other authorization. Where unnecessary degradation is anticipated, BLM's recourse is to negotiate or, as a last resort, seek injunctive relief.

a. Width.

(1) For those RS 2477 rights-of-way in the State, county, or municipal road system, i.e., the right-of-way is held and maintained by the appropriate government body, the width of the right-of-way is as specified for the type of highway under State law, if any, in force at the latest time the grant could be accepted. The width may be specified by a general State statute, i.e., secondary roads are 60 feet in width, or may be very specific, i.e., the statute authorizing State Highway 1 specifies the width to be 200 feet. Some statutes may establish a width that is "reasonably necessary" for the needs of the particular road - a floating width. In these cases "reasonably necessary" is determined under the conditions existing on the date of repeal (October 21, 1976), or such earlier date when RS 2477 was no longer applicable to the parcel of land.

(2) Where the right-of-way is not held by a local government, or State law does not apply, the width is determined from the area, including appropriate back slopes, drainage ditches, etc., actually in use for the highway at the later of (1) acceptance of the grant or (2) loss of grant authority under RS 2477.

b. Ancillary Uses.

(1) Ancillary uses or facilities usual to public highways have historically involved electric transmission lines and communication lines located adjacent to but within the highway right-of-way. Prior to November 7, 1974, the holders of such facilities were not required to obtain permission from BLM, only from the holder of the highway right-of-way. Facilities constructed outside the highway right-of-way on or after November 7, 1974, require authorization from BLM.

(2) For ancillary facilities constructed prior to November 1974, place such information that is available, e.g., a copy of the highway holder's permission or similar documentation, in the RS 2477 case file. No further action is necessary.

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(3) For ancillary facilities constructed subsequent to November 1974 with the highway holder's permission, BLM authorization is required, including payment for use during the period between construction and BLM authorization. It is Departmental policy that such facilities constructed between November 1974 and December 7, 1988, be accommodated by right-of-way or other authorization; removal or relocation will be considered only in rare and unusual circumstances and with prior approval of the Director (320).

(4) Ancillary facilities constructed outside the highway right-of-way, without the highway right-of-way holder's permission, or subsequent to December 7, 1988, are not authorized and appropriate action to resolve the unauthorized use situation should be undertaken.

c. Abandonment. Abandonment, including relinquishment by proper authority, occurs in accordance with State, local or common law or Judicial precedence. For highways held by local governments, most states have procedural statutes for abandonment proposal, hearing, and final order by the appropriate governmental entity. For those highways held by the "public in general," local statutes may or may not exist. Petitioning the appropriate governmental entity for abandonment of unnecessary RS 2477 highways is a tool available to BLM.

d. Conversion to Title V Highway Rights-of-Way. Due to the uncertain nature of RS 2477 highway rights-of-way, it may be mutually beneficial to BLM and the local highway entity to convert RS 2477 highway rights-of-way to Title V of FLPMA. This should be considered when the local highway entity seeks a Title V right-of-way to authorize partial realignment or similar action in conjunction with an RS 2477 right-of-way.

C. Access to Mining Claims. (Reserved)

D. Access to Salable Minerals. (Reserved)

E. Access to Leasable Minerals Other than Oil and Gas. (Reserved)

F. Pact Finders Act. Subsection 4P of the Act of December 5, 1924, (43 Stat. 704; 43 USC 417) authorizes the reservation of a right-of-way or easement to the United States over public land withdrawn for Bureau of Reclamation project purposes by the Bureau of Reclamation. Any needs for Bureau of Reclamation projects, not located on withdrawn public lands, shall be authorized with a FLPMA right-of-way grant. A Bureau of Land Management/Bureau of Reclamation Interagency Agreement dated March 25, 1983, establishes when this procedure will be used and the means by which reservations are made. The authorized officer shall note such reservations on the Master Title Plats. These reservations may be transferred or assigned to an irrigation district or to various water user groups by the Bureau of Reclamation.

TITLE 17. TRANSPORTATION AND PUBLIC FACILITIES

Chapter

- 5. Administration (17 AAC 05.030, 17 AAC 05.040, 17 AAC 05.090)
- 25. Operations, Wheeled Vehicles (17 AAC 25.030 — 17 AAC 25.035, 17 AAC 25.060, 17 AAC 25.063, 17 AAC 25.066, 17 AAC 25.105 — 17 AAC 25.110)
- 30. (Repealed)
- 35. Toll Highways (17 AAC 35.020, 17 AAC 35.200)
- 40. Aviation (17 AAC 40.340)
- 70. Marine Transportation (17 AAC 70.220, 17 AAC 70.221)

Publisher's notes. — Emergency regulations, if any, are placed in an appendix following the permanent regulations in each pamphlet of the Alaska Administrative Code.

CHAPTER 05. ADMINISTRATION

Section

- 30. Off-system roads
- 40. Maintenance of off-system roads

Section

- 30. Definitions

17 AAC 05.030. OFF-SYSTEM ROADS. (a) In order to provide access that is appropriate for specific uses and local conditions, the department may classify a road, which is not part of the Alaska Highway System described in 17 AAC 05.010, as a trail, basic access road, pioneer road or community road under (b) ~~(e)~~ of this section.

(b) A trail may be any foot path or way open to public use as a matter of right that

- (1) is not more than eight feet wide;
- (2) is not graded or surfaced; and
- (3) whose drainage improvements, if any, do not meet minimum department standards for secondary roads.

(c) A basic access road may be any road open to public use as a matter of right that

- (1) is at least eight feet wide;
- (2) has portions of its route graded and surfaced;
- (3) has drainage improvements that do not meet minimum department standards for secondary roads;
- (4) has structural improvements that permit the fording of streams;
- (5) has no signs indicating road junctions or other road-related information; and
- (6) provides access to
 - (A) a cabin, homestead, or lodge, or
 - (B) a mineral resource extraction site.

17 AAC 05.040 ADMINISTRATIVE CODE SUPPLEMENT 17 AAC 05.040

(d) A pioneer road may be any road open to public use as a matter of right that

- (1) is at least eight feet wide;
- (2) has portions of its route graded and surfaced;
- (3) has drainage improvements that do not meet minimum department standards for secondary roads;
- (4) has structural improvements that permit the crossing of natural features such as streams, gullies and wet areas;
- (5) has signs indicating road junctions and other road-related information; and
- (6) provides access
 - (A) from a town, village or community to a local site used by the residents of the town, village or community, or
 - (B) from a mineral resource extraction site to a mineral resource transportation facility.

(e) A community road may be any road open to public use as a matter of right that

- (1) meets the minimum department standards for secondary roads, as set out in the Alaska Department of Transportation and Public Facilities' *Highway Preconstruction Manual, Part II* including those standards set out in ch. 11, section 11-03.06, Drainage; and
- (2) provides access
 - (A) from a town, village or community to a local site used by the residents of the town, village or community, or
 - (B) from a mineral resource extraction site to a mineral resource transportation facility. (Eff. 9/20/91, Register 119)

Authority: AS 19.05.020
AS 19.10.020

Editor's notes. — Copies of the department's *Preconstruction Manual* are available for inspection at the department's regional offices in Juneau, Anchorage and Fairbanks.

17 AAC 05.040. MAINTENANCE OF OFF-SYSTEM ROADS.

(a) The department may not maintain a road that is not part of the Alaska Highway System except by reimbursable service agreement under 17 AAC 20.040.

(b) A municipality that maintains a road that is not part of the Alaska Highway System may be eligible for state aid under AS 29.60.110(a).

(c) An individual or group of individuals may maintain a road that is not part of the Alaska Highway System. The following maintenance levels are offered only as suggested guidelines in such cases:

17 AAC 05.090 TRANSP. AND PUBLIC FACILITIES 17 AAC 05.090

(1) If an individual or group maintains a trail, the trail should be maintained in such a manner that it is possible to travel on the established pathway of the trail.

(2) If an individual or group maintains a basic access road, the road should be maintained in such a manner that it is possible to travel the road with an off-road vehicle without serious difficulty.

(3) If an individual or group maintains a pioneer road, the road should be maintained in such a manner that it is possible to easily travel the road with an off-road vehicle.

(4) If an individual or group maintains a community road, the road should be maintained in such a manner that it is possible to easily travel the road with a conventional passenger vehicle. (Eff. 9/20/91, Register 119)

Authority: AS 19.05.020
AS 19.10.020

17 AAC 05.090. DEFINITIONS. In this chapter

(1) "conventional passenger vehicle" means a self-propelled vehicle used primarily for the transportation of persons on public roads but not used for the transportation of persons for hire or for other commercial purposes;

(2) "commissioner" means the commissioner of the Department of Transportation and Public Facilities;

(3) "department" means the Department of Transportation and Public Facilities;

(4) "graded and surfaced" means the placement of earthen or other materials on the path or roadway in such a way that enhances the passage of vehicles;

(5) "mineral resource extraction site" means a place where heavy equipment is used to remove mineral resources from the surface or subsurface;

(6) "mineral resource transportation facility" means a place where raw mineral resources are transferred between different modes of transportation;

(7) "off-road vehicle" means a self-propelled all terrain vehicle designed primarily for off-road use; and

(8) "wet areas" means land that has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation adapted for life in saturated conditions. (Eff. 9/20/91, Register 119)

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