

VACATION OF SECTION-LINE EASEMENTS UNDER A LOCAL PLATTING AUTHORITY

Division of Mining, Land and Water • July, 2018

“Vacating” a right-of-way means officially removing it. When a vacation occurs, the access right merges into the landowner’s property right, and the public is no longer entitled to travel that route. Landowners are sometimes surprised to learn there is a section-line easement across their property. They want to know how to move the right-of-way, narrow it, or remove it altogether. Others ask how public access rights can be protected and used. This fact sheet explains applicable requirements.

What are section-line easements? And what do they have to do with R.S. 2477

rights-of-way? A section-line easement is a public right-of-way, 33, 50, 66, 83 or 100 feet wide, that runs along a section line of the rectangular survey system. All 33- and 66-foot-wide section-line easements were acquired by the state under R.S. 2477, regardless of whether trails have ever been developed along them. Also, some 50- and 100-foot-wide easements along section lines have narrower R.S. 2477 rights-of-way “inside” them. An R. S. 2477 right-of-way is a type of public easement that the State of Alaska acquired under long-standing federal law. To learn more about R.S. 2477 rights-of-way, look for DNR’s fact sheet on that topic or visit http://dnr.alaska.gov/mlw/trails/rs2477/rst_srch.cfm .

Does every section line have an easement? How can I determine if an easement exists?

Not every section line has an easement. There is a technical procedure for researching whether or not a section-line easement exists, which depends on land status during periods when specific laws were in effect. See the editor’s note following 11 AAC 51.025 for more information. If land status is complex, a professional land surveyor, title company or attorney could research the existence of an easement.

I have a section-line easement on my land. I don’t want to vacate the easement, just make it narrower. Narrowing a right-of-way is a partial vacation and still requires an official process.

Why doesn’t the borough platting office handle the vacation?

The 1999 legislature passed a new state law, AS 29.35.090, prohibiting local government from vacating RS 2477 rights-of-way. DNR believes that the local platting authority’s role is still very important, allowing representation of local interests and legal notice to nearby landowners who might be affected by a vacation. (Unlike tax records kept by a borough, DNR’s land status plats do not show private landholdings.) However, to ensure that a statewide perspective is taken, only DNR and the Department of Transportation and Public Facilities, or the legislature itself can make the final decision to vacate an RS 2477 right-of-way. AS 19.30.410.

What if I want to vacate a section-line easement that is not a R.S. 2477?

By regulation, DNR uses the same general process for vacations of all easements managed by the department, including all section-line easements. 11 AAC 51.065.

What policy rules does DNR use in deciding on a vacation? Because a vacation means giving up a state-owned access right, DNR cannot approve it unless DNR determines that the vacation is in the state's interest, and that other access is available that meets standards set by state laws and regulations. See 11 AAC 65.065. DNR's general policy is that the replacement access must be equal to or better than the access provided by the section-line easement. AS 19.30.410 applies to R.S. 2477 vacations:

...(an) agency of the state may not vacate...unless
(1) a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses; [or]
(2) the right-of-way is within a municipality, the municipal assembly or council has requested the vacation, a reasonable alternative means of access is available, and the vacation is in the

How does a person apply for a vacation? To apply for a section-line easement vacation, file a "Petition to Change or Vacate an Easement" (available on request). The petition must include a map showing the portion of the route proposed for vacation and the alternate access route. Also, begin the local process by applying to the platting authority (usually this is the borough).

Are there any application costs? Yes. See current Director's Fee Order for applicable fees. The petitioner must pay public notice costs. The platting authority will probably charge fees also.

Will there be any public review? Yes. Before DNR can vacate a right-of-way, people who may want to use it, now or in the future, must have the opportunity to comment. The platting authority will probably publish notice locally and hold a hearing. Meantime, DNR will prepare a formal notice describing the proposal, opening a comment period; and:

- 1) Publish it in a newspaper of statewide circulation
- 2) Notify adjacent land owners (or the platting authority may)
- 3) Post it on the State of Alaska's public notice website
- 4) Send it to other state agencies such as the Division of Parks and Outdoor Recreation, the Department of Transportation and Public Facilities, and the Department of Fish and Game
- 5) Notify other parties likely to be interested
- 6) Posting on or near the easement (optional)

Will DNR decide the vacation entirely on its own? No, DNR will base its decision on:

- Public and agency comment DNR received
- In some cases, the results of a field inspection at the petitioner's expense to check the current existing use and condition of the route proposed for vacation, and the adequacy of the proposed alternate route
- The recommendation of the platting authority, after its own hearing
- Dept. of Transportation and Public Facilities' consent as the state's transportation authority
- Dept. of Fish & Game comments

In considering public comment, what factors will DNR look at? The department will not vacate or change a section-line easement unless it finds that the action is in the state's best interests and that the replacement access meets the standard of 11 AAC 51.065, after considering the existing easement and the possible alternate access in terms of underlying land ownership, land management policies applicable to both routes, current public use patterns, and practicality of use. See 11 AAC 51.065(e).

What if the replacement route isn't ready for use? The department might grant "contingent approval" for a vacation. After the petitioner fulfills conditions such as obtaining an easement or constructing a trail, the vacation will be finalized.

What agency in DNR is responsible for section-line easement vacations, and how can I follow the process? Various DNR personnel will coordinate to gather and review information on the proposal. DNR's Land Survey Unit staff will receive the petition, prepare the public notice, consider the comments, and draft the vacation decision, for signature by the director of the Division of Mining, Land and Water. Regional land management staff will recommend in writing whether the proposal meets the standard of 11 AAC 51.065 and is in the state's interest. Anyone may inspect DNR's vacation case file at any stage of this process. When finished, the file will contain the signed petition, the public notice and documentation of how it was distributed, the platting authority's conditions of approval or recommendation for disapproval, written comments received, a field investigation report (if applicable), and the final decision.

What are the final steps in a vacation? People who commented on the proposal will receive a copy of the final decision and may appeal it. The vacation will not be finalized until the conditions of approval have been completed and ownership verified. The vacation of a section-line easement requires a plat prepared by a land surveyor.

For additional information, contact Department of Natural Resources:

Public Information Center 550 W 7 th Ave., Suite 1360 Anchorage, AK 99501-3557 (907) 269-8400 TDD: (907) 269-2259	Division of Mining, Land and Water Public Information Office 400 Willoughby Ave., Suite 400 PO Box 111020 Juneau, AK 99801 (907) 465-3400	Public Information Center 3700 Airport Way Fairbanks, AK 99709-4699 (907) 451-2705
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