



Repealed.

**History:** Eff. 5/14/92, Register 122; am 11/10/93, Register 128; repealed 5/3/2001, Register 158

**11 AAC 51.065. Vacation of easements**

(a) An affected person or a municipal assembly or city council may petition the department to vacate, modify, or relocate,

(1) in accordance with [AS 19.30.410](#) , an R.S. 2477 right-of-way, including a section-line easement under [AS 19.10.010](#) that the department manages under [AS 19.30.400](#) and AS 38;

(2) in accordance with [AS 38.05.127](#) (d), an access easement reserved under [AS 38.05.127](#) and 11 AAC [51.045](#);

(3) in accordance with [AS 40.15.300](#) - 40.15.380, a platted easement dedicated to public use and managed by the department under AS 38;

(4) on land that the state currently owns or formerly owned, a public easement reserved along a section line under [AS 19.10.010](#) ; or

(5) another state-owned public easement managed by the department.

(b) A petition to the department under (a) of this section must also be submitted to the platting authority for consideration, including public notice and a public hearing, in accordance with the procedures set out in

(1) [AS 29.40.120](#) - 29.40.150, if the platting authority is established under [AS 29.40.080](#) by a municipality described in [AS 40.15.070](#) (a); or

(2) [AS 40.15.305](#) and 11 AAC [53.250](#), as applicable, if the platting authority is the department in accordance with [AS 40.15.070](#) (b).

(c) If a municipal platting authority declines to consider the petition in accordance with the procedures set out in [AS 29.40.120](#) - 29.40.150, on the grounds that the public easement is unplatted or is an R.S. 2477 right-of-way, the department will give notice of the petition in a newspaper of general circulation in the vicinity of the public easement and provide a comment period of at least 30 days. The petitioner shall reimburse the department for the costs of notice.

(d) In addition to a notice, comment opportunity, or hearing provided under (b) - (c) of this section by a municipal platting authority or the department, the department will give notice of a petition under (a) of this section and provide a comment period of at least 30 days by publishing notice in a newspaper of statewide circulation, posting notice on the Alaska Online Public Notice System developed under [AS 44.62.175](#) , and notifying other parties known or likely to be affected by the action, including the Department of Transportation and Public Facilities and the Department of Fish and Game. The petitioner shall reimburse the department for the costs of notice.

(e) In its administrative review and finding under this section whether to vacate, modify, or relocate a public easement is in the best interests of the state, the department will include

(1) consideration of any recommendation or decision, as applicable, from the platting authority;

(2) a comparison of the public easement sought to be vacated, modified, or relocated with alternate access proposed in accordance with (f), (g), or (h) of this section, as applicable, in terms of underlying land ownership, land management policies, current public use patterns, and practicality of use; and

(3) consideration of public and agency comments that are material to the comparison undertaken in (2) of this subsection.

(f) Before any vacation, modification, or relocation of a public easement described in (a)(2) - (a)(5) of this section, the petitioner must demonstrate to the satisfaction of the department that equal or better access is available. Equal or better access must be access that is

(1) protected by an easement of record that is adequately wide for the purpose; if the easement of record is new, the petitioner must arrange for a note in the vacation document to be recorded under (j) of this section that identifies the new easement as a replacement for the vacated easement; and

(2) at least equally usable, considering length, type of terrain, and level of improvement, as the easement to be vacated; if development or improvement is needed to make the replacement easement at least equally usable, the petitioner must arrange for the development or improvement to be completed before the vacation takes effect.

(g) For purposes of any department determination to vacate, modify, or relocate, in accordance with AS 19.30.410 (1), an R.S. 2477 right-of-way described in (a)(1) of this section,

(1) the petitioner must demonstrate to the satisfaction of the department that a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses;

(2) a right-of-way or means of access is reasonably comparable if it provides

(A) equal or better access as described in (f) of this section; and

(B) access between the same destinations as the R.S. 2477 right-of-way, for an R.S. 2477 right-of-way other than a section-line easement;

(3) a right-of-way or means of access is established if, before any vacation takes effect, all necessary surveying, platting, and recording have been completed, and the alternate access is ready for its intended use; the petitioner must arrange for a note in the vacation document to be recorded under (j) of this section that identifies the right-of-way or means of access that serves as a replacement for the vacated R.S. 2477 right-of-way; and

(4) a right-of-way or means of access is sufficient to satisfy all present and reasonably foreseeable uses if it is suitable for future trail development, road development, and utility installation, if the department finds that those uses may be needed in the future, and if the department finds that the R.S. 2477 right-of-way to be vacated is suitable for those uses; for purposes of this paragraph,

(A) if poorly drained soils make an R.S. 2477 right-of-way suitable only for winter use, the alternate right-of-way or means of access must also be suitable for winter use, but need not be suitable for an all-season road;

(B) the alternate right-of-way or means of access may be provided through more than one route, each suitable to a particular use; and

(C) the alternate right-of-way or means of access may be provided at a reduced width, either along the original alignment or elsewhere, if the reduced width is sufficient for all present and reasonably foreseeable uses.

(h) For purposes of any department determination to vacate, modify, or relocate, in accordance with [AS 19.30.410](#) (2), an R.S. 2477 right-of-way described in (a)(1) of this section,

(1) the department will not consider a municipal assembly or city council to have requested the vacation unless vacation is requested by ordinance; and

(2) the petitioner must demonstrate, to the department's satisfaction, that a reasonable alternative means of access is available; a reasonable alternative means of access need not qualify as equal or better access as described in (f) of this section; the petitioner must arrange for a note in the vacation document to be recorded under (j) of this section that identifies the alternative means of access that serves as a replacement for the vacated R.S. 2477 right-of-way.

(i) The department will not approve the vacation, modification, or relocation of a section-line easement or R.S. 2477 right-of-way described in (a)(1) or (a)(4) of this section, including an R.S. 2477 right-of-way that has been identified under 11 AAC [51.045\(f\)](#) (2)(B)(i) as an access easement to navigable or public water, without the consent of the commissioner of transportation and public facilities under [AS 19.05](#) - 19.30.

(j) A vacation, modification, or relocation of a public easement is not final until a

(1) plat is recorded evidencing the vacation, modification, or relocation, if the public easement being altered was previously identified by a recorded plat; or

(2) document is recorded identifying the affected lot, tract, or parcel and describing the manner in which the affected public easement is being altered, if the easement was not previously identified by a recorded plat; the department will not require a plat to be prepared and recorded unless a plat is necessary to locate a new easement that will replace the easement being altered.

(k) An owner of land affected by an unplatted R.S. 2477 right-of-way may request the department's approval to reroute the right-of-way elsewhere on that owner's land to an alignment that less adversely affects the landowner's interests. The department will approve the realignment if the realignment provides access reasonably comparable to the original, does not affect land in other ownership, and connects to the original route where it enters and exits the landowner's land. The realignment of an R.S. 2477 right-of-way under this subsection within a parcel of land does not constitute a vacation under this section.

**History:** Eff. 5/3/2001, Register 158

**Authority:** [AS 19.30.410](#)

[AS 38.04.058](#)

[AS 38.04.200](#)

[AS 38.04.900](#)

[AS 38.05.020](#)

[AS 38.05.035](#)

[AS 38.05.127](#)

[AS 40.15.070](#)

[AS 40.15.305](#)

### **11 AAC 51.070. Appeal**

Repealed.

**History:** Eff. 5/14/92, Register 122; repealed 5/3/2001, Register 158

**Editor's note:** The subject matter of 11 AAC [51.070](#) was relocated to 11 AAC [51.910](#).

### **11 AAC 51.075. Surveying and field marking of easements**

(a) The department may require as a condition of any sale, lease, grant, or other disposal of state land that the purchaser, lessee, or grantee survey, mark, or both survey and mark access easements reserved or retained under this chapter in a manner consistent with the following requirements:

(1) marking of an access easement across uplands must include clearly visible monuments or signs at the following places:

(A) at the intersection of the access easement and any public road, railroad, trail, or aircraft landing site;

(B) at the intersection of the access easement and any navigable or public water;

(C) along the access easement at intervals reasonably sufficient to allow the route to be followed, unless the easement's route is shown by a clearly visible trail or road;

(2) marking of an access easement along a water body or waterway must include a clearly visible monument or sign where the access easement intersects any public road or trail.

(b) Both the purchaser, lessee, or grantee and the successors or assignees of that person shall perpetuate and maintain any marking required under (a) of this section.

(c) A person may not obstruct, move, or destroy a marking on an access easement without written permission from the department.

**History:** Eff. 5/3/2001, Register 158