

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES DIVISION OF MINING, LAND AND WATER

SEAN PARNELL, GOVERNOR

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Subject: Petition Process for Easement Vacation within a local platting authority

Dear Potential Applicant:

This letter outlines the process for vacating an easement managed by the Department of Natural Resources, when the easement lies within the jurisdiction of a local platting authority. Section-line easement vacations are the most common, but this process applies to all easements requiring DNR approval to vacate, including RS2477 rights of way and easements to and along public waters under AS 38.05.127.

RS 2477 right-of-way and section-line easement vacations must be approved by the Department of Natural Resources (DNR) and the Department of Transportation and Public Facilities (DOT/PF).

I. PETITION:

- A. A petition form completed by the petitioner or his/her representative containing the signatures of the landowners directly affected must be submitted. (A copy of the petition form is enclosed.)
- B. In order to ensure that the public interest is also addressed at the local level, **DNR requires that the applicant apply for the vacation with the local borough** or municipal platting authority. The borough considers local concerns and transportation infrastructures. The state considers these issues statewide. The applicant may apply with DNR before the local platting authority but, **the Division of Mining, Land & Water will not issue a Final Finding and Decision until the conditions of approval from the local platting authority are received. This step is not required where there is no local platting authority.** If time is critical, it is advisable to apply with the local platting authority at the same time you apply with DNR.
- C. ***Required Submittal:***
In addition to A and B above, obtain or prepare a map or plat of the area showing the following information:
1. Preliminary plat clearly illustrating the location of the proposed vacation and proposed alternate means of access. Petitioner needs to include statement as to whether they are aware of any current or historical use of the easement proposed for vacation and the alternate access and whether they are constructed.
 2. Map showing property boundaries. If property has been subdivided, then provide copy of an unaltered recorded plat containing the property.
 3. Map or as-built identifying existing structures on petitioner's property.
 4. Map identifying existing section-line easements, utilities and dedicated rights-of-way within a one mile radius or greater surrounding the petitioner's property.

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

5. Map identifying available access to lands that are affected by the proposal.
6. Aerial photograph (if available) and/or topography map showing contours.
7. It is not required, but it may also help the decision process if the petitioner specifically addresses, in writing, the following points concerning the existing easement **and** the alternate route:

Underlying Land Ownership
 Current Public Use Patterns
 Practicality of Use

D. A RS 2477 or section-line easement vacation, must comply with Chapter 26 SLA 98, AS 19.30.410. It states that agencies of the State “may not vacate a right-of-way acquired by the state under former 43 U.S.C. 932 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.”**

Alternate Means of Access

Before the vacation of a RS 2477 or section-line easement is approved, the petitioner **must** satisfy the department that equal or better access is available. “Equal or better access” means access protected by an easement of record that is adequately wide for the purpose, and at least equally usable considering length, type of terrain, and level of improvement, as the easement to be vacated.

The vacation of a public right-of-way involves giving up of a public right in favor of the landowner. DNR will not approve a vacation unless it determines that the action is in the state’s interest.

E. Mail the above information and a check for the application fee to the Survey Section; Division of Mining, Land & Water; 550 W 7th Avenue, Suite 650; Anchorage, AK 99501-3576.

II. APPLICATION FEE & ADVERTISING COST:

The petitioner must pay the application fee and the cost of advertising the public notice. The petition must be accompanied by a check for \$750.00 for the APPLICATION fee and made payable to the Alaska Department of Natural Resources. After the department determines the cost to advertise the public notice in a newspaper, you will be notified and must then submit to this office a check made payable to Alaska Department of Natural Resources.

III. STATE ACTION:

The DNR Survey Unit will review the petition for completeness and verify the state’s jurisdiction under AS 40.15.305(e), AS 19.30.410 or AS 29.35.090 for this area, and that fees and costs have been paid.

Prior to issuance of the Preliminary Finding and Decision the department requests comments from interested State agencies, including Department of Transportation & Public Facilities (DOT/PF), Department of Fish and Game (DFG), DNR Division of Mining, Land & Water (DMLW), DNR Division of Parks and Outdoor Recreation (DPOR), and Alaska Mental Health Trust Land Office (TLO). Before a “Public Notice of Preliminary Finding” is published in a newspaper of statewide circulation it will be the applicant’s responsibility to address their

concerns and/or requirements.

Then public notice will be published. After the close of the 30-day written comment period, the Director of the Division of Mining, Land & Water will approve or disapprove the petition. This written Final Finding and Decision will be subject to a 20 day appeal period. If no appeal is filed, this decision goes into effect as a final order and decision on the 31st day after issuance; and only then will the vacation plat or document be signed.

The department's decision of whether to vacate is based on consideration of the comments received by mail and E-mail, the recommendation of the local platting board, DOT/PF, and research by DNR staff. In addition to the comments received, DNR staff will also consider the existing easement and the possible alternate access in terms of underlying land ownership, land management policies, current public use patterns, and practicality of use. These factors establish the scope of the department's administrative review and finding.

Occasionally, the department may require a field investigation to be conducted by DNR staff. This inspection is to determine the current existing use and condition of the area proposed for vacation, and the adequacy of the proposed alternate route.

IV. Vacation Document:

- A. If the petition is approved, at the petitioner's expense, a survey plat must be prepared by an Alaska Registered Land Surveyor and submitted for review and approval. These submittals are subject to a review fee of \$200.00.
- B. The petition approval becomes null and void if a survey plat is not submitted and recorded within 18 months of the Final Finding and Decision effective date.
- C. **DNR and DOT/PF approval of the final vacation document is required.**

V. Alternative:

Option other than vacating: An owner of land affected by an unplatted RS 2477 right-of-way may request the department's approval to relocate the right-of-way elsewhere on that owner's land. 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. Such a realignment of an RS 2477 right-of-way within a parcel of land does not constitute a vacation under this section.

Should you have any questions, please contact Joe Poydack at (907) 375-7733, George Horton at (907) 269-8610, or myself at (907) 269-8521. A fact sheet on RS 2477 vacations is enclosed for your information.

Sincerely,



Stanley Brown
Land Surveyor II

Enclosures: Petition Form; DOT/PF Information Required Handout;
RS 2477 and Section Line Easement Vacation Fact Sheet

TO: State of Alaska
Department of Natural Resources
Realty Services/ Survey Unit
550 W 7th Avenue, Suite 650
Anchorage, AK 99501-3576

EV No: _____

PETITION FOR

I (We) the undersigned petitioner (petitioners), being the owner (owners) of a majority of the property (abutting) (lying within)

request the (vacation) (replat) (amendment) (change of basic configuration) of

depicted in said survey.

The reasons for this request are:

The petitioner (petitioners) file this petition under the authority of A.S. 40.15.305(e).

The undersigned petitioner (petitioners) by their signature (signatures) certify that I am the owner (they are the owners) of and have possessory rights in the property described next to my (their) signature (signatures).

Submitted this _____ day of _____, 20_____

PETITIONERS:

Name (clearly printed) and Signature	Legal Description	Mailing Address/ Phone Number	Date
1. _____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
2. _____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____

PETITIONERS (cont.):

Name (clearly printed) and Signature	Legal Description	Mailing Address/ Phone Number	Date
3. _____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
4. _____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
5. _____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
6. _____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
7. _____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
8. _____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____

Petitioner or attorney for the petitioner designated to receive service by mail.

Name _____ Address _____

VACATION OF SECTION-LINE EASEMENTS UNDER A LOCAL PLATTING AUTHORITY

Division of Mining, Land and Water • November, 2006

“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://www.dnr.state.ak.us/mlw/trails/f2477.htm>.

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 best

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. DNR's application fee is \$750, and 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 1260 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 Juneau, AK 99801 (907) 465-3400	Public Information Center 3700 Airport Way Fairbanks, AK 99709-4699 (907) 451-2705
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DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES (DOT/PF)

Research Information REQUIRED from Petitioner for DOT/PF Review of Section Line Easement Vacation Proposals

1. Preliminary plat clearly illustrating the location of the proposed vacation and proposed alternate means of access. Petitioner needs to include statement as to whether they are aware of any current or historical use of the proposed and whether the proposed are constructed.
2. Map showing property boundaries. If property has been subdivided, then provide copy of an unaltered recorded plat containing the property.
3. Map identifying existing structures on petitioner's property or as-built.
4. Map identifying existing section line easements, utilities and dedicated rights-of-way within a one mile radius or greater surrounding the petitioner's property.
5. Map identifying available access to lands that are affected by the proposal.
6. Aerial photograph (if available) and/or topography map showing contours.

Items requested and listed above can be combined therefore we do not require a separate map for each. However we ask that the information be presented in a legible format.