

DNR's Easement Vacation Decision Process

A Paper Presented at the
37th Annual Alaska Surveying and Mapping Conference



By

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February, 2002

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ABSTRACT

Implementing recently adopted 11 AAC 51.065 Vacation of Easements and due to changes in AS 19.10 relating to RS 2477, DNR has established a decision process for vacation of DNR reserved or managed easements. This paper will discuss the DNR, DOT/PF and borough roles and the steps to be followed.

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DNR's Easement Vacation Decision Process

Recent changes to Alaska Statute 19.30.410, and new regulations (11 AAC 51.065) affect all easement vacations for rights-of-way managed by the Department of Natural Resources. On recommendation of our Attorney General's Office, the department has implemented a decision process for vacations. This paper will cover the steps for the surveyor and applicant to take to petition the State for vacation of a RS 2477 right-of-way, section-line easement or other DNR-managed easement. We will also cover the current state of coordination with local platting authorities and the roles of other State agencies in the vacation process.

Submitting a Petition to Vacate with DNR

The first step in getting the State to consider a vacation is the submission of the petition. For the most timely consideration, it helps to provide the complete list of required materials, as listed in the instructions that come with the petition forms:

1. The petitioned vacation action clearly indicated.
2. Current property boundaries, existing and dedicated rights-of-way and easements within 500 feet.
3. All vacated section line easements on the property and within 500 feet.
4. Existing roads, trails, utilities, structures, and driveways located on the property within the area proposed for vacation.
5. Topographical maps covering the area proposed for vacation and the alternate access.

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

These three items must be addressed on the Preliminary Finding and Decision, so addressing them directly makes the decision to vacate easier and may result in a more favorable decision. Petition forms may be requested from the Survey Unit. Submit the complete petition package to:

Brian Raynes (or for Unorganized Borough - Joe Kemmerer)
Cadastral Survey Unit
550 W 7th Ave, Suite 650
Anchorage, AK 99501-3576

The best time to submit the petition to DNR is close to the same time you apply with the local platting authority. The two processes are similar and take a similar amount of time. Many of the materials required for submittal are similar to those required by the local platting authority.

Addressing alternate access

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.”**

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. A more detailed definition is contained within 11 AAC 51.065(f) & (g) (See Appendix A).

An alternate route must be part of the petition submission. Many times this alternate route is obvious, such as when the vacation is proposed between two existing or proposed street dedications. Otherwise, the petitioner will want to describe a proposed alternate route. This alternate route criteria is not always just a discussion about not land-locking individual parcels, but that the route proposed for vacation that allowed public access from point A to point B must have an alternate route providing public access from point A to point B. It should also be noted that if the easement proposed for vacation has an existing trail or other improvements, that the alternate will be required to be improved to the same extent.

Most of the items covered thus far have been minimum requirements for vacation. 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. With that in mind, there are a few times when land managers at DNR or DOT/PF will want some further condition, usually access related, in exchange for approving the vacation.

Agency Review Period

After the petition submittal is complete, the DNR Survey Unit will solicit agency comments. The entire proposal will be submitted to the DNR land management office for the appropriate region, the DOT/PF regional office, the Division of Parks and Outdoor Recreation and the Department of Fish & Game, Habitat and Restoration Division. Usually, a 30 day period is allowed for agency comments. Because the commissioners of DNR and DOT/PF both must sign approval of section-line easement and RS 2477 vacations, the process will not proceed until the DNR land management office and DOT/PF submit comments.

If there are objections at this stage, the petitioner will be notified, and generally the case will not proceed to a Preliminary Finding and Decision until agency objections are resolved. This will involve the petitioner going directly to the objecting agency to negotiate a resolution, but the process of proceeding further will be helped if the petitioner keeps the DNR Survey unit up to date on any discussions. If major changes are made to the original proposal, a new period of agency review will follow, so that other agencies can comment on the changes.

Preliminary Finding and Decision & Public Notice

When the agency comments come in and the decision is ready to proceed, a Preliminary Finding and Decision is issued by the DNR Survey Unit and signed by the Chief of the Technical and Data Management Section. It will include any conditions that are put on the approval by DNR or DOT/PF. Most commonly these conditions are that the alternate route is dedicated and possibly constructed.

Within a Local Platting Authority, on approval of the preliminary decision, public notice of the decision will be published in a newspaper of statewide circulation and on the State of Alaska Public Notice website. This begins the public comment period. Currently, the newspapers used for this notice are the Anchorage Daily News, Fairbanks Daily News-Miner and the Juneau Empire. After publishing, a letter will be sent to the surveyor or the applicant requesting a check for the cost. This amount varies, depending on length of the notice, the specific paper used and the day of the week it is printed. So far, the Anchorage Daily News has charged between \$250 and \$300.

Within the Unorganized Borough, a Public Hearing is scheduled and announced as part of the Public Notice. This hearing is usually held at the Anchorage Survey Unit office.

Public Comment

The public comment period lasts for 30 days. Anyone, other than the applicant and agencies, who wishes to have the right to appeal the Final Finding and Decision must comment during this period. Thus far, there have been almost no public comments on easement vacations within local platting authorities.

Within a Local Platting Authority, any public comments will be considered and then the Final Finding and Decision will be issued. If major changes result from this consideration, a new public notice will be required, followed by another 30 day public comment period.

Within the Unorganized Borough, any public comments will be considered and then a Platting Resolution is issued and signed by the Chief of the Technical and Data Management Section. If major changes result from this consideration, a new public notice will be required, followed by another 30 day public comment period. The Platting Resolution will be submitted along with the Final Finding and Decision to the Director of Mining, Land and Water.

Final Finding and Decision

After the public comment period is over and the local platting authority has issued it's conditions of approval, a Final Finding and Decision will be issued and signed by the Director of the Division of Mining, Land and Water.

A 20-day appeal period follows the issuing of the Final Finding and Decision, this allows anyone who made a comment during the public comment period to appeal the decision to the Commissioner of DNR.

Plat Review and Recording

If there was no public comment, and the decision was in favor of vacating, this is the earliest appropriate time to submit the vacation plat and review fees. Review fees for vacation plats are \$200.

If the vacation proposal is part of a new subdivision proposal, it is preferred that the vacation be part of the subdivision plat. This avoids the platting process for two plats and helps future researchers to find the vacation as part of ordinary subdivision plat research. The best way to find out about easement vacations by DNR is the Land Administration System (LAS). A person can contact the DNR Public Information Center or the DNR survey unit for help in researching LAS. There is a public website for doing this research by township at: <http://www.dnr.state.ak.us/cgi-bin/lris/landrecords> .

When the final mylar is submitted, all fees are paid, and the owner and surveyor have signed then DNR will get the signatures of the various State officials required and submit the plat to the local platting authority for signing and recordation.

In cases where the final decision included approval contingencies, verification that those have been met is required. For example, if construction to an equivalent or better standard is required, it will have to be certified to DNR's satisfaction by the surveyor or a state or municipal agent.

APPENDIX A

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

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

Annotations

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

