

Fact Sheet

Title: R.S. 2477 Rights-of-Way



Alaska Department of
**NATURAL
RESOURCES**

Division of Mining, Land & Water
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This fact sheet explains the origin of a century-old mining law that has broad implications for Alaska's future. It is intended to illustrate the potential this law has in helping preserve Alaska's public access options for the future.

What is R.S. 2477?

Revised Statute 2477 is found in section 8 of the Mining Law of 1866. It granted states and territories unrestricted rights-of-way over federal lands that had no existing reservations or private entries. The law remained in effect until Congress repealed it in 1976. In Alaska, the opportunity to establish new R.S. 2477 rights-of-way generally ended December 14, 1968, when the federal government issued PLO 4582—the “land freeze”—to prepare for settlement of Alaska Native land claims. Though no new rights-of-way could be established after federal land was reserved or appropriated, or after the law was repealed in 1976, these actions did not extinguish pre-existing rights.

Revised Statute 2477 states: “The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.”

What did Congress mean by “highways”?

It's important to distinguish the historical meaning of “highways” from the modern. The word “highway” was historically used to refer to foot trails, pack trails, sled dog trails, crudely built wagon roads, and other corridors for transportation. R.S. 2477 was included in the first comprehensive mining law and was used initially by miners and homesteaders on federal land. The broad wording of the law does not limit the type of right-of-way to which it applies.

Alaska Statute 19.45.001(9) defines a highway to include “a highway (whether included in primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof....”

What does this mean for Alaskans?

R.S. 2477 rights-of-way could be established in Alaska from 1884 (the Organic Act, which extended general land laws to the new territory), to 1968 (PLO 4582). From its territorial origins to today, Alaska has consisted mainly of federally owned land. During its 84 years of application in this state, many rural mail routes, mining trails, and other transportation routes became R.S. 2477's through construction and/or use. The State of Alaska, Department of Natural Resources

has documented hundreds of historic routes that qualify as R.S. 2477 rights-of-way. Surface transportation between Alaska's hundreds of rural communities and other resource destinations still relies heavily on our cross-country trails, primarily used in the winter by snowmachines, dogsled teams, and four-wheel all-terrain vehicles.

What are some examples of R.S. 2477's?

Some examples include DeBar Road in Anchorage and Farmer's Loop Road in Fairbanks. Other routes that the State believes to qualify as R.S. 2477's include the Stampede Trail in Denali National Park and Preserve, the Nabesna-Chisana Trail in Wrangell-St. Elias National Park, the Dalton Trail in the vicinity of Haines, the Eureka-Rampart Trail in the Interior, and the Chilkoot Trail near Skagway.

How many R.S. 2477 rights-of-way have been asserted?

While hundreds of R.S. 2477's have been validated within the western states, only a handful of routes have been cooperatively validated in Alaska with BLM. During 1993-1995, the Department of Natural Resources' R.S. 2477 Project researched more than one thousand trails. The project found that some 600 of these qualified as R.S. 2477 rights-of-way under state standards. In 1998 the Legislature listed these trails in AS 19.30.400, stating that they had been accepted as R.S. 2477 rights-of-way. That same legislation requires the department to continue researching trails and to prepare an annual report identifying those found to qualify as R.S. 2477's. Many additional trails have been reported to the Legislature since then.

What if land has been conveyed without specifying that there is a valid R.S. 2477 right-of-way across it?

In Alaska, millions of acres once controlled by the federal government have been transferred to Native corporations or into other private ownership. Land conveyances are always subject to “valid existing rights.” Courts have ruled that where an R.S. 2477 right-of-way exists, the new landowner's title is subject

to the right-of-way, which must still be honored. There are many Alaskan land owners who want the assurance that their rights and interests will not be adversely affected in the process of R.S. 2477 identification and platting. The Alaska Legislature instructed in its 1998 law that, while providing for the public's right to use these historic access easements, "every effort should be made to minimize the effect on the affected private property owners."

What is some of the R.S. 2477 case law?

One of the most frequently quoted cases affecting R.S. 2477 is Hamerly v. Denton, decided in 1961. The court clearly explained that R.S. 2477 was one-half of a grant—an offer to dedicate an easement across unreserved, unappropriated federal land. That offer of a right-of-way grant could be accepted by either of two methods:

- a) By "some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention" to accept it; or
- b) By "public user for such a period of time and under such conditions as to prove that the grant has been accepted."

Additionally, Girves v. Kenai Peninsula Borough, 1975, established that some section-line easements are R.S. 2477's. Shultz v. Army, 1993, concerning a right-of-way claim across Fort Wainwright, established that the public right-of-way between the origin and termini of the route need not be absolutely fixed, and upheld the broad definition of a highway found in state law. On rehearing, the 9th Circuit Court of Appeals reversed its original ruling in the Shultz case. However, the legal reasoning that produced that original decision has been used to support other cases.

What are the rules for using R.S. 2477 rights-of-way?

Some rights-of-way will likely be improved for access to valuable state resources, communities, and land. Others will be used as they have been in the past. Some might not be used at all, or might be developed only as foot trails. If you are not sure whether a trail you want to use is an R.S. 2477 right-of-way, check public land records and consult with each land owner or managing agency before crossing the property. Typically R.S. 2477 rights-of-way are available for public use under DNR's regulations. DNR's management rules can be found in DNR's recently revised chapter of public easement regulations, 11 AAC 51. However, the Department of Transportation and Public Facilities' regulations apply to R.S. 2477 rights-of-way that are part of the Alaska Highway System or that DNR has otherwise transferred to that department. In some cases, the State might transfer management of an R.S. 2477 right-of-way to a city or

borough, but without giving it the right to "vacate" or officially erase the right-of-way. That is because municipalities are prohibited by law from vacating R.S. 2477 rights-of-way.

For additional information:

An R.S. 2477 Atlas is available for purchase at the DNR Public Information Offices in Anchorage, Fairbanks, and Juneau. The Atlas lists approximately 560 routes, identified and located on map inserts. The department has also made documentation on many qualifying R.S. 2477 routes available at the State and University Archives.

Another source is DNR's website on R.S. 2477 rights-of-way, <http://www.dnr.state.ak.us/mlw/trails/rs2477/>. From that site you can reach a map of Alaska that links to descriptions of many R.S. 2477 trails. In addition, if you know the official "RST" number of any R.S. 2477 right-of-way, you can find its complete casefile documentation and description in DNR's public land records at

<https://nutmeg.state.ak.us/ixpress/dnr/case/RequestRpt.dml>

These two websites provide the most up-to-date R.S. 2477 information available. You can find RST numbers of more than 600 routes, cross-referenced by trail name, in AS 19.30.400. For RST numbers of additional routes that DNR has documented since that law was passed in 1998, check DNR's annual reports to the legislature. All of the sources mentioned here are public documents that everyone has a right to see.

For further information or to buy an Atlas, contact:

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