

SB

180

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 4/18/97

FURTHER: Finance

Date of 5-Day Notice: 1/29/98
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2/24/98

Resources Committee considered

SENATE BILL NO. 180

"An Act relating to state rights-of-way."

and recommends:

- be replaced with _____ CS 180 (RES)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
 same title
 new title
House Bill:
 same title
 technical title
 new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Andrew D. Keenan</i>	✓				
<i>Scott M. Murray</i>	✓				
<i>Lynda Green</i>	✓				
<i>Chair: Rick Halford</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

SB+
CS ←
SB+
CS

Department	Date	Zero	Fiscal
NR	7/24		141.7
DOT	2/5/98	✓	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 180

Revision Date _____	Dept. Affected <u>DOT&PF</u>
Title <u>An Act relating to state rights-of-way</u>	BRU <u>Office of the Commissioner</u>
	Component <u>Commissioner's Office</u>
Sponsor <u>Senator Halford</u>	
Requester <u>Senate Resources</u>	Component Serial No. <u>530</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING						

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by <u>Dennis Poshard</u> Legislative Liaison	Phone <u>465-3904</u>
Division <u>Office of the Commissioner</u>	Date <u>2/5/98</u>
Approved by: <u><i>Dorothy L. Johnson</i></u> , Commissioner	Date <u>2/5/98</u>
Agency <u>Department of Transportation and Public Facilities</u>	

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB180(RES)

Revision Date: 24-Feb-98

Dept Affected: Natural Resources

Title: An Act Relating to State Rights-of-Way

BRU: Resource Development

Component: Land Development

Sponsor: Senators Halford, Green, Leman ...

Requestor: (S) FIN

Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES	48.6					
TRAVEL						
CONTRACTUAL	93.1					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	141.7	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	141.7					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	141.7	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: \$ none

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	4	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Personal Services:
 Requires two Natural Resource Technician II's (Range 12) @ 800 hours each = \$27.2
 and two Administrative Clerk II's (Range 8) @ 800 hours each = \$21.4

Contractual:
 Copy costs for approx. 585 files = \$8.8
 Recording costs for approx. 585 files = \$84.3

Prepared by: Jane Angvik, Director Phone: 907-269-8503
 Division: Land Date: 24-Feb-98
 Approved by Commissioner: John Shively Date: 2-24-98
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR HALFORD

TO: SB 180

1 Page 1, line 1, following "relating to":

2 Insert "land and to"

3 Page 1, following line 2:

4 Insert a new bill section to read:

5 **** Section 1.** AS 09.65 is amended by adding a new section to read:

6 **Sec. 09.65.207. Tort immunity for damages occurring on R.S. 2477 right-of-way.**

7 An owner of land that is subject to a right-of-way under former 43 U.S.C. 932 (R.S. 2477)
8 or that abuts a right-of-way under former 43 U.S.C. 932 (R.S. 2477) is not liable in tort,
9 except for an act or omission that constitutes gross negligence or reckless or intentional
10 misconduct, for damages to a person who enters onto or remains on the land if

11 (1) the person had no responsibility to compensate the owner for the
12 person's use of the right-of-way or the land; and

13 (2) the damages arise out of the person's use of the right-of-way."

14 Page 1, line 3:

15 Delete "Section 1"

16 Insert "Sec. 2"

17 Renumber the following bill section accordingly.

18 Page 21, following line 15:

19 Insert a new bill section to read:

20 **** Sec. 3.** AS 34.17 is amended by adding a new section to read:

21 **Sec. 34.17.025. Immunity from civil damages.** In addition to the immunity

CONSERVATION

1 provided by AS 09.65.200, an owner of land subject to a ~~conservation~~ easement under
2 this chapter that provides public access for recreational purposes on the land is not
3 liable in tort, except for an act or omission that constitutes gross negligence or
4 reckless or intentional misconduct, for damages to a person who uses the easement
5 to enter onto or remain on the land if

6 (1) the person had no responsibility to compensate the owner for the
7 person's use of the easement or the land; and

8 (2) the damages arise out of the person's use of the easement for
9 recreational purposes on the land."

10 Renumber the following bill section accordingly.

11 Page 21, line 16:

12 Delete "1998"

13 Insert "1999"

14 Page 21, line 17:

15 Delete "sec. 1"

16 Insert "sec. 2"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR HALFORD

TO: SB 180

- 1 Page 21, line 14, following "vacation,":
- 2 Insert "a reasonable alternative means of access is available,"



Official Business

Alaska State Legislature

Senate

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Sponsor Statement

Senate Bill 180

" An Act Relating to State Rights-of-way."

Revised Statute 2477 (R.S. 2477) was a right granted to the states by the United States Congress with the passage of the Mining Act of 1866. The purpose of this law was to provide for, and guarantee, the public's right to establish access across federal lands. Subsequent congressional action, and more than 100 years of case law, has recognized the state's authority to determine and define R.S. 2477 rights-of-way.

Although Congress repealed R.S. 2477 in 1976 with the adoption of the Federal Land Policy and Management Act, they specifically acknowledged the legal existence of R.S. 2477 rights-of-way established prior to the repeal. Current Federal Regulation explicitly provides that any rights conferred by the R.S. 2477 grant shall not be diminished. (43 CFR § 2801.4)

Last year the legislature passed SJR 13 with broad support reiterating their position regarding R.S. 2477 and making clear the objection to the United States Department of the Interior's new policy. Information that came forward during the committee process on SJR 13 as well as during the Joint Senate and House Resources Committee's overview of the issue supports the subsequent action being taken with Senate Bill 180.

SB 180, an Act relating to state rights-of-way, codifies 582 documented R.S. 2477 rights-of-way, requires them to be recorded and provides a process for, and limitations on, their vacation.

Beginning with the legislative appropriations in 1992 and 1993, which funded the research and compilation of historical information regarding R.S. 2477, the legislature has taken the lead in moving this issue forward. In undertaking those legislatively designated projects, the Department of Natural Resources (DNR) reviewed some 1,700 potential R.S. 2477 routes. This DNR review resulted in the identification of 582 rights-of-way that appear to qualify and can be supported with appropriate documentation. These 582 routes are published in the Historical Trails catalogue and incorporated into the state land administration system (LAS).

While the R.S. 2477 rights-of-way codified in this bill have already been accepted by public users and deemed supportable by the state, it is likely the federal government will dispute the state's ownership on some or all of these routes. Although the current federal administration is attempting to limit the state's rights regarding R.S. 2477 rights-of-way, over 100 years of case law on point recognizes state law as controlling on the issue. Codifying these routes in statute will strengthen the state's position for possible subsequent court action, and provide the affected land owners and general public clear notification that these R.S. 2477 rights-of-way are available for use.

R.S. 2477 rights-of-way are crucial to the future of our young and still largely undeveloped state. They are essential to provide surface travel to Alaska's many untapped mineral deposits and other natural resources, recreational areas and tourism opportunities, and access to and between Alaska's rural areas.

R.S. 2477 rights-of-way are an existing state right that we cannot allow to be "regulated away" by the federal bureaucracy. I urge your support of this legislation.

RS 2477 APPROPRIATIONS

AGENCY APPROPRIATION	TITLE	AMOUNT			
		GF	Federal	Other	TOTAL
Natural Resources					
Ch. 79 SLA 1993, p. 18 I. 9	RS 2477 Assertion (CIP)	720.0			720.0
Ch. 4 FSSLA 1994, p. 11 I. 10	RS 2477 Assertions and mapping (CIP)	300.0			300.0
Ch. 123 SLA 1996, p. 36, I. 27	RS 2477 Assertions/litigation support	50.0			50.0
Ch. 98, SLA 1997, P. 43, I. 30	RS 2477 Assertions and litigation support	40.0			40.0
Law					
* Ch. 5 FSSLA 1992, p. 32, I. 15	Federal lawsuits (CIP)	1,200.0			1,200.0
* Ch. 4 FSSLA 1994, p. 6, I. 23	Federal litigation continuation (CIP)	750.0			750.0
* Ch. 103 SLA 1995, p. 34, I. 30	Federal litigation/endangered species act, etc. (CIP)	900.0			900.0
* Ch. 117 SLA 1996, p. 38, I. 11	Statehood defense	900.0			900.0
Ch. 123 SLA 1996, p. 36, I. 12	RS 2477 assertions and litigation	200.0			200.0
* Ch. 98, SLA 1997, p. 41, I. 8	Statehood defense	990.6			990.6
Fish & Game					
* Ch. 79 SLA 1993, p. 19, I. 10	Assert/protect state's rights to manage Alaska's resources (CIP)	300.0			300.0
* Ch. 4 FSSLA 1994, p. 12, I. 7	Assert/protect state's rights (CIP)	200.0		200.0	400.0
* Ch. 103 SLA 1995, p. 40, I. 4	Assert and protect state's rights (CIP)	100.0		200.0	300.0
* Ch. 123 SLA 1996, p. 33, I. 23	Protection of access to public waters (CIP)		64.1	85.9	150.0
* Ch. 123 SLA 1996, p. 33, I. 29	ANILCA implementation/protection of state's rights related to navigable waters (CIP)			200.0	200.0
(1) Ch. 117, SLA 1996, P. 27, I. 18	Wildlife Conservation			200.0	200.0
* Ch. 98, SLA 1997, p.29, I. 11	Assert/protect state's rights			200.0	200.0
DOT/PF					
Ch. 208 SLA 1990, p. 63, I. 21	Annual planning work program (2) (CIP)				195.0
Ch. 96 SLA 1991, p. 42, I. 11	Statewide annual planning work program (2) (CIP)				125.0
TOTALS:		6,650.6	64.1	1,085.9	8,120.6

* Indicates possible funding for RS 2477 related activity

(1) Beginning in FY97 Wildlife Conservation allocates \$200,000 F&G Funds for ANILCA and state's rights related issues in the operating budget. Prior to FY97 these activities were funded from the above referenced state's rights CIP appropriations.

(2) DOT/PF spent the amounts referenced in the totals column from the appropriations noted. The source of funding for the RS2477 expenditures (i.e., federal or GF) was not provided by the agency.



SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189 Session: State Capitol, Juneau, AK 99801 (907) 465-2095

MEMORANDUM

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MAR 19 1996

Ans'd.....

TO: Senator Lyda Green

FROM: Senator Loren Leman *Loren*

RE: S. 1425 hearing in Washington, D.C.

DATE: March 19, 1996

I testified before the Senate Energy & Natural Resources Committee in Washington, D.C. on March 14 on behalf of the Senate and House majorities.

S. 1425, a bill by Senators Murkowski and Stevens, clarifies and protects Alaska's rights in RS 2477 rights-of-way. The Department of Interior has proposed regulations that will deprive Alaska of some of these rights.

My verbal testimony, as well as that by Elizabeth Barry, Assistant Attorney General, are attached. Please let me know if you want a copy of the written testimony that I submitted (43 pages).

RECEIVED
19 1996
AS d.....

TESTIMONY OF
ELIZABETH J. BARRY,
ASSISTANT ATTORNEY GENERAL OF
THE STATE OF ALASKA

BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
REGARDING S. 1425
MARCH 14, 1996

Mr. Chairman, members of the Committee, I am Elizabeth J. Barry, an Assistant Attorney General of the State of Alaska. I speak today on behalf of the State of Alaska on the general principles which, in our opinion, should govern RS 2477 decision-making. I thank the Committee for this opportunity to express our views.

The State would first like to place its testimony within a context of five principles which provide part of the basis for its policy regarding RS 2477 grants. These are:

1. Federal law does not preempt state law regarding how RS 2477 rights-of-way are asserted, accepted, and managed;
2. There must be an orderly process with a finite end point for claiming RS 2477 rights-of-way;
3. Assertion and management of RS 2477 rights-of-way are to be considered within a larger transportation plan for the State of Alaska of which public review is an integral part;
4. If access across Native-owned and other private lands is determined to be necessary through a process involving public review, right-of-way authority other than the application of RS 2477 rights-of-way will be utilized if available; and
5. The State will be sensitive to the needs and purposes of federal conservation system units in its management of RS 2477 rights-of-way which cross such lands.

As I am sure you are already aware, few issues raise the concern of Alaskans like those associated with how we get from one location to another across large distances. Alaska is a young state, and we have only recently completed the process of selecting the lands we were granted at Statehood.

With more than sixty percent of the State owned by the Federal Government, it is easy to understand that some routes traverse properties managed by federal property managers. In these situations, access sometimes depends upon RS 2477 grants.

It is the State's position that RS-2477 rights-of-way were a self-executing grant that transferred a property right to the State, under State law standards. This property right was created when acts constituting the acceptance of the grant took place. Because Congress ended the grant process in 1976, these acts occurred anywhere from two to twelve decades ago. The State's position is founded in and supported by over one hundred years of case law.

Because no formal act of federal acceptance was required, and because of the vastness and remoteness of Alaska, we understand that the location of some of these routes may not be clearly delineated on federal land plats. The lands across which rights were first granted may have since become national conservation units or may have been transferred into State, local or private hands. We recognize that, today, rights-of-way are created by new and different statutory authorities. However, these considerations should not cause us to overlook the important role RS 2477 routes have and continue to play.

Other federal right-of-way regimes, such as Title XI of ANILCA, were written to augment existing means of access. Experience has demonstrated that Title XI is an inadequate substitute, in many cases, for rights-of-way previously created under RS 2477. However, the State recognizes that in managing RS 2477's, it should take cognizance of current concerns and thinking which have led to enactment of federal right-of-way statutes since 1976.

The State recognizes the extent to which the Department of the Interior has studied the question of what constitutes a RS-2477 grant. We differ with the

Department, however, in the course taken by the proposed rulemaking it has put forward. Alaska believes that the proposed regulations would impinge on rights that have already been transferred.

In recognition of the need to research potential RS 2477 routes, the State undertook an extensive identification and documentation project. We examined more than 1000 possible routes, and identified a number of them for further study.

The State is presently developing policies regarding how rights-of-way asserted under RS 2477 will be managed. In Alaska, with vast lands that are roadless, it is important to maintain a rational approach to transportation planning. RS 2477 routes must be a part of a sound transportation plan which includes a well-maintained national highway system, roads that serve community needs including economic development and pedestrian safety, and trails for Alaskans and visitors. This planning process will determine what is appropriate access, recognizing the legitimate concerns of land owners and managers. Integrated into the planning will be a straight-forward public process which allows for citizens to be actively involved and will avoid policies of the past that allowed for roads to nowhere.

This planning process is being guided by three principles: 1) sound science that guides, but does not dictate policy; 2) prudent management that ensures sustainability and conservation; and 3) a public process that strives to make decisions through consensus.

The State of Alaska recognizes the concerns expressed by the Native community and by conservationists. The State is aware that inappropriate right-of-way use could have detrimental economic and subsistence impacts on Native landholders and rural communities. In conservation system units, there is concern about the potential for unmanaged access and resource conflicts. For example, various parties have raised questions about impacts on wilderness areas, parks and additional important conservation units that are magnets for tourism and other outdoor activities.

With these thoughts in mind, the State seeks to work cooperatively with Congress, the federal administration, Native landholders, developers, conservationists, and others to develop an approach which provides an orderly process for resolving conflicts while confirming and managing RS 2477 rights-of-way under State law. This approach will serve to prevent RS 2477 issues from ending up in court. Alaska Attorney General Bruce Botelho, Commissioner John Shively of the Alaska Department of Natural Resources, and John Katz, Director of State-Federal Relations, are the key players for the State of Alaska on this issue.

Thank you, once again, for the opportunity to testify.

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Adm. L.

TESTIMONY OF
ALASKA STATE SENATOR LOREN LEMAN
on behalf of
THE ALASKA STATE LEGISLATURE
before the
UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
regarding
S. 1425

Mr. Chairman, members of the committee, thank you for the opportunity to testify today on this important legislation. I am Alaska State Senator Loren Leman. I chair the Senate Resources Committee. I am testifying today on behalf of Senate President Drue Pearce, Speaker of the House Gail Phillips, and the majority members of the Alaska Legislature.

Mr. Chairman, I will be brief in my remarks, but ask that my full statement, along with an extended evaluation we have prepared, be made a part of the record of this hearing.

As this Committee by now knows so well, there is a unique character to getting from one point to another in Alaska. Our R.S. 2477 routes embody that character, and most are very unlike the well-developed road systems that serve travelers across much of the rest of this country. Alaskan routes are often just a well trodden footpath or long traveled dogsled trail leading from one village to another or from a village to historic hunting, fishing, and gathering grounds. Most Committee members are not likely to have heard of many of these routes. Some were used one hundred years ago by my great-grandfather and grandfather, both miners, as they provided for my family in Alaska. Others are better known because they are parts of the route being used right now by those competing in the Iditarod dogsled race. These routes, footpath or road, well known or not, offer Alaskans fragile lines of access across unforgiving geography.

They are often the only land route available, and are often irreplaceable because of subsequent changes in the status or ownership of surrounding property. Their importance to Alaskans is why I am here today.

The Legislature supports S. 1425 because it protects long-standing vested property rights. The bill does not create new rights-of-way, nor should it. We only desire a reasonable process for resolution of disputes concerning property rights granted under law between 20 and 130 years ago.

The need for this legislation, as you know, was created by legal revisionism embodied in the R.S. 2477 regulations proposed by the Department of the Interior. This legislation rebukes the Department's attempt to invalidate rights by restrictively, and retroactively re-defining key statutory terms. The result of the regulations would be that rights-of-way grants supported by Congressional intent and long-standing judicial interpretation would be rescinded by unauthorized agency action.

An important point that this bill reaffirms is the role of state law in the acceptance of an R.S. 2477 grant. Cases from the U.S. Court of Appeals, various state supreme courts, and even past regulations of the Department of the Interior all provide that state law defines the existence and scope of an R.S. 2477 grant. In other words, as Congress intended and case law upholds, state law defines what acts constitute acceptance of the R.S. 2477 offer. The DOI itself, from 1938 to the repeal of the statute, interpreted an R.S. 2477 grant as becoming "effective upon the construction or establishing of highways, in accordance with the State laws, over public lands not reserved for public uses." In 1986 this view was reaffirmed when the Department agreed in Federal District Court that R.S. 2477 "is applied by reference to state law to determine when the offer of grant has been accepted by the 'construction of highways.'"

There has been discussion of Alaskan section line easements and R.S. 2477. Under a decision of the Alaska Supreme Court, the state statute creating section line easements was held to be an acceptance of the R.S. 2477 grant. For dramatic effect the

DOI profoundly exaggerates the utility of such routes, even if they do exist. First, there is a real question whether an unsurveyed section line can be an R.S. 2477 route since it is not yet fixed to an exact location on the ground. Further, reasonable people know that, because of foreboding terrain and very low population density, only a small percentage of these section lines in Alaska could be useful or effectively developed as roads. Also, keep in mind that most development is prohibitively expensive anyway, and any development would be subject to extensive contemporary environmental standards. In addition, the State of Alaska retains the power to restrict and regulate the use of R.S. 2477 rights-of-way. The State has the authority to prohibit all use of the section line easements that may exist or to agree with the federal government on what section lines should and should not be used.

In terms of the time period for filing the notice, I suggest that this should be lengthened from the existing 5 years to 10 years. The State knows, through its own extensive process of evaluating claimed routes, that a great deal of time and expense is necessary to prove up what was never before required to be documented. Commencing in 1992 the Legislature funded a \$1.2 million project to research nearly 1900 potential routes. We have determined that 560 routes appear to qualify, 260 require more research, and 322 have not yet been studied. The remaining 750 either do not meet legal criteria or duplicate other routes. These results are the product of an extensive process including public notice and input, a process that should not be shortchanged for the sake of expedience. I assure you that the process clearly rejects unsubstantiated claims. The routes that received the State's certification are bona fide claims. From our experience we know that to do this in a reasonable, responsible and fiscally realistic manner will require more than 5 years.

Especially for the sake of private land owners in Alaska, I emphasize that the process in this bill applies only to rights on lands now owned by the federal government. Appropriately, this bill does not affect whatsoever laws applicable to the adjudication of underlying rights on what is now private and other non-federal property.

In summary, Mr. Chairman, the Alaska Legislature supports this legislation. Its crucial elements are the affirmation of the role of state law in the acceptance of a grant, a reasonable time period for filing the notice, which we suggest should be 10 years, and the acknowledgement that this process applies only to routes existing on lands now owned by the federal government.

Again, I appreciate the time and attention of this committee, and am happy to respond to any questions you may have.

SETTLED PRECEDENT ON R.S. 2477

Revised Statutes 2477 (R.S. 2477) states, in its entirety:

"Sec. 8. *And be it further enacted*, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." § 8 of the Act of July 26, 1866, 14 Stat. 253, later codified at 43 U.S.C. § 932.

This statute has been interpreted innumerable times over the 128 years since its passage by state and federal courts and by the Department of Interior and these interpretations have consistently outlined fundamental core principles which have guided its application over the years. In particular, the statute has been applied universally by reference to state law. Furthermore, the definitions under state law of terms such as "highway" and "construction" have always been honored. The new regulations proposed by the Department of Interior do not provide a fair treatment of this legal history and the definitions which were relied upon for the 110 years that the offer under R.S. 2477 was open. The following outline provides just a few quotations from the vast body of administrative and court-made law which the new regulations attempt to ignore and thereby reverse.

I. THE ROLE OF STATE LAW:

Early federal regulations stated:

This grant [R.S. 2477] becomes effective upon the construction or establishing of highways, in accordance with the State laws, over public lands not reserved for public uses. No application should be filed under this act, as no action on the part of the Federal Government is necessary. 56 I.D. 533 (May 28, 1938).

These regulations were retained, virtually unchanged, for 110 years:

No application should be filed under R.S. 2477, as no action on the part of the Government is necessary. . . . Grants of rights-of-way referred to in the preceding section become effective upon the construction or

establishment of highways, in accordance with the State laws, over public lands, not reserved for public uses. 43 C.F.R. §§ 2822.1-1, 2822.2-1 (October 1, 1974) (See also, 43 C.F.R. 244.54 (1938); 43 C.F.R. 244.58 (1963)).

In 1986, the Department recognized its duty to honor prior, valid existing rights:

A right-of-way issued on or before October 21, 1976, pursuant to then existing statutory authority is covered by the provisions of this part unless administration under this part diminishes or reduces any rights conferred by the grant or the statute under which it was issued, in which event the provisions of the grant or the then existing statute shall apply. 43 U.S.C. § 2801.4 (February 25, 1986).

Supplementary information supplied by the Department stated:

It was not the intent of the proposed rulemaking, nor is it the intent of this final rulemaking, to diminish or reduce the rights conferred by a right-of-way granted prior to October 21, 1976. . . . In addition, if questions should arise regarding the rights of a right-of-way holder under a grant or statute, the earlier editions of the Code of Federal Regulations on rights-of-way will remain available to assist in interpretation of the rights conferred by the grant or earlier statute. . . . In carrying out the Department's management responsibilities, the authorized officer will be careful to avoid any action that will diminish or reduce the rights conferred under a right-of-way grant issued prior to October 21, 1976. 51 Fed.Reg. 6542 (February 25, 1976).

The Department also recognized the role of state law when making representations to the courts:

The parties are in agreement that the right of way statute is applied by reference to state law to determine when the

offer of grant has been accepted by the "construction of highways. Wilkenson v. Dept. of Interior of United States, 634 F.Supp. 1265, 1272 (D. Colo. 1986) (citation omitted).

The Department's own appellate bodies also recognized the propriety of the application of state law:

The question of whether a road is a public highway is a matter of state law. The Sierra Club et al., 104 IBLA 17, 19 (1988).

State courts have also been consistent in their treatment of R.S. 2477 rights-of-way:

Under this act [R.S. 2477] highways could be established over public lands not reserved for public uses while they remained in the ownership of the government. Congress did not specify or limit the methods to be followed in the establishment of such highways. It was necessary, therefore, in order that a road should become a public highway, that it be established in accordance with the laws of the state in which it was located. Ball v. Stephens, 158 P.2d 207, 209 (Cal. Ct. App. 1945).

It has been held by numerous courts that the grant [under R.S. 2477] may be accepted by public use without formal action by public authorities, and that continued use of the road by the public for such length of time and under such circumstances as to clearly indicate an intention on the part of the public to accept the grant is sufficient. Lindsay Land & Livestock v. Churnos, 285 P. 646, 648 (Utah, 1930).

By this act [R.S. 2477] the government consented that any of its lands not reserved for a public purpose might be taken and used for public roads. The statute was a standing offer of a free rights of way over the public domain, and as soon as it was accepted in an appropriate manner by the agents of the public, or the

public itself, a highway was established. Streeter v. Stalnaker, 61 Neb. 205, 85 N.W. 47, 48 (1901).

Federal courts have concurred:

The salient issue is whether the scope of R.S. 2477 rights-of-way is a question of state or federal law. . . . Especially when an agency has followed a notorious, consistent, and long-standing interpretation, it may be presumed that Congress' silence denotes acquiescence: "[G]overnment is a practical affair, intended for practical men. Both officers, lawmakers, and citizens naturally adjust themselves to any long-continued action of the Executive Department, on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle, but the basis of a wise and quieting rule that, in determining the meaning of a statute or the existence of a power, weight shall be given to the usage itself,--even when the validity of the practice is the subject of investigation." United States v. Midwest Oil Co., 236 U.S. 459, 472-73, 35 S.Ct. 309, 312-13, 59 L.Ed. 673 (1915).. . . The perfection of an R.S. 2477 right-of-way admittedly is a different issue [from] its scope. However, all of the above-cited cases concern the conflict between an alleged R.S. 2477 right-of-way and a competing claim of right to the land. The cases subsume the question of scope into the question of perfection; and indeed a critical part of many of the state law definitions of perfection included the precise path of the purported roadway. Having considered the arguments of all parties, we conclude that the weight of federal regulations, state court precedent, and tacit congressional acquiescence compels the use of state law to define the scope of an R.S. 2477 right-of-way. Sierra Club v. Hodel 848 F.2d at 1080, 1083. (Citations omitted.)

Ordinarily, this expression of intent [by the state legislature] would constitute valid acceptance of the right-of-way granted in Section 932. That section acts as a present grant which takes effect as soon as it is accepted by the State. . . . All that is needed for acceptance is some "positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept" Wilderness Society v. Morton, 479 F.2d 842, 882 (D.C. Cir. 1973), (quoting Hamerly v. Denton, Alaska, 359 P.2d 121, 123 (1961); citing also Kirk v. Schultz, 63 Idaho 278, 282, 119 P.2d 266, 268 (1941); Koloen v. Pilot Mound Township, 33 N.D. 529, 539, 157 N.W. 672, 675 (1916); Streeter v. Stalnaker, 61 Neb. 205, 206, 85 N.W. 47, 48 (1901)).

"Under R.S. 2477, a right-of-way could be established by public use under terms provided by state law." Sierra Club v. Hodel, 675 F.Supp. at 604. "Whether the roads have been established under the provisions of R.S. 2477 is a question of New Mexico law." U.S. v. Jenks, 804 F.Supp. 232, 235 (D.N.M. 1992). "Whether a right of way has been established is a question of state law." Shultz v. Department of Army, U.S., 10 F.3d at 655.

II. STATEMENTS OF THE 10TH CIRCUIT COURT OF APPEALS ON THE IMPORTANCE OF STATE LAW

The United States Circuit Court of Appeals for the 10th Circuit, commenting on "more than four decades of agency precedent, subsequent BLM policy as expressed in the BLM Manual, and over a century of state court jurisprudence" on this issue:

The adoption of a federal definition of R.S. 2477 roads would have very little practical value to BLM. State law has defined R.S. 2477 grants since the statute's inception. A new federal standard would necessitate the remeasurement and redemarcation of thousands of R.S. 2477 rights-of-way across the country, an administrative duststorm that would choke BLM's ability to manage the public lands That a change to a federal standard would adversely affect existing property relationships squarely refutes Sierra Club's allegation that the use of a state law standard unfairly prejudices the federal

government. R.S. 2477 rightholders, on the one hand, and private landowners and BLM as custodian of the public lands, on the other, have developed property relationships around each particular state's definition of the scope of an R.S. 2477 road. The replacement of existing standards with an "actual construction" federal definition would disturb the expectations of all parties to these property relationships. Sierra Club v. Hodel, 848 F.2d at 1082-1083.

FLPMA admittedly embodies a congressional intent to centralize and systematize the management of public lands, a goal which might be advanced by establishing uniform sources and rules of law for rights-of-way in public lands. The policies supporting FLPMA, however, simply are not relevant to R.S. 2477's construction. It is incongruous to determine the source of interpretative law for one statute based on the goals and policies of a separate statute conceived 110 years later. Rather, the need for uniformity should be assessed in terms of Congress' intent at the time of R.S. 2477's passage. Id.

III. CONGRESSIONAL INTENT IN PASSING FLPMA

Debate leading up to the enactment of FLPMA, on a predecessor bill, addressed R.S. 2477 specifically. This bill contained the same terms which were later incorporated into FLPMA, providing that "All actions by the Secretary under this Act shall be subject to valid existing rights" and providing for the repeal of R.S. 2477.

Senator Stevens, of Alaska, expressed concern that rights to "*de facto public roads*" established across public lands and roads "*that through tradition, through usage, through the passage of time, in fact, have become public access roads or highways*" would be jeopardized by the repeal of R.S. 2477. 120 Cong. Rec. 22283-22284 (1974). Senator Haskell, of Colorado, speaking in favor of the legislation (S-424), stated: "*if a strip of land is being used for a highway over public land in accordance with State law at the time of enactment of this bill, then that grant of right-of-way is preserved by reason of section 502 of the bill.*" Id. at 22284.

There can be no question that Congress intended, when it passed FLPMA, that R.S. 2477 rights-of-way be interpreted in accordance with state law. In an attempt to "*make sufficient legislative history,*" Senator Haskell referred specifically to state case law, stating:

I am referring now, if the Senator would like, the citation is Koloen versus Pilot Mound Township, I believe it is, 33 North Dakota 529, it says:

To constitute acceptance of congressional grant of right-of-way for highways across public lands there must be either user sufficient to establish a highway under the laws of the State, or some positive act proper authorities manifesting intent to accept.

In other words, a use or some positive act of proper authorities manifesting intent to use. This is the way I would apply this one-sentence statute [R.S. 2477] enacted in 1866: either there is a an actual existing public use, or there is a manifest intent which could be put into action by an application to the Department of the Interior, and they would say "yes." In other words, it is a two-way proposition. Id.

It is also clear that it was an essential condition of the BLM "organic act" that the full rights under R.S. 2477, as well as other rights, were to be preserved. Senator Haskell, in support of the predecessor bill, said *"I would like to take this opportunity to reassure the various users of the natural resources lands -- and these people include those who graze cattle, it includes people who mine, it includes people who use public lands for recreation -- that none of their rights or privileges are being adversely affected."* Id. at 22280.

It is also clear that Congress understood that R.S. 2477 rights-of-way would not be limited to "significant" roads:

MR. STEVENS. Would the Senator from Colorado agree that if a State has accepted an obligation to maintain a road or trail, if it has partially constructed or reconstructed it, or has indicated an exercise of its police authority by virtue of posting signs as to the speed limits, for example, which demonstrate it is a public highway - if the State has taken actions that would normally be taken by a State in furtherance or its normal highway program, and those roads were on such a right-of-way public lands, would the Senator agree that we have no intent of wiping those out, but those would be valid, existing rights under the one-sentence statute the Senator mentioned previously?

MR. HASKELL. I agree with the Senator 100 percent. Id. at 22284.

Furthermore, in response to a concern about "existing roads and trails from village to village" and about "dogsled trails," Senator Haskell stated:

I am not familiar with dogsled trails, but let me say I agree with the Senator that so long as the intent was for public use, then the right-of-way was established at that time under that 1866 act. Id.

A review of that debate can leave no doubt that Congress intended R.S. 2477 rights to be exercised fully in accordance with state law after the passage of the BLM "organic act."

IV. FLPMA EXPLICITLY PROTECTS PRIOR VALID EXISTING RIGHTS

Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this act. FLPMA § 701(a), 43 U.S.C. § 1701 note (a).

All actions by the Secretary concerned under this Act shall be subject to valid existing rights. FLPMA § 701(h), 43 U.S.C. § 1701 note (h).

Nothing in this title [43 U.S.C. §§ 1761 et seq.] shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted or permitted. FLPMA § 509(a), 43 U.S.C. § 1769(a).

V. DEFINITIONS OF "HIGHWAY" AND "CONSTRUCTION"

In Colorado, the term 'highways' includes footpaths. *Simon v. Pettit*, 651 P.2d 418, 419 (Colo.Ct.App. 1982), *aff'd*, 687 P.2d 1299 (Colo.1984). "Highways" under 43 U.S.C. § 932 can also be roads "formed by the passage of wagons, etc., over the natural soil." *Central Pacific Railway Co. v. Alameda County*, 284 U.S. 463, 467, 52 S.Ct. 225, 226, 76 L.Ed. 402 (1932). The trails and wagon roads over the lands which became part of the Colorado National Monument were sufficient to be "highways" under 43 U.S.C. § 932

[R.S. 2477]. Wilkenson v. Dept. of Interior of United States, 634 F.Supp. at 1272.

"The term highway is the generic name for all kinds of public ways, whether they be carriage-ways, bridle-ways, footways, bridges, turnpike roads, railroads, canals, ferries, or navigable rivers." Bouv. Law Dict., Rowle's Third Rev. p. 1438, Tit. Highway; Elliott, Roads and Streets, p. 1; 25 Am.Jur, 340. Parsons v. Wright, 27 S.E.2d 534 (N.C. 1943)

A highway is commonly defined as a passage, road, or street which every citizen has a right to use. . . . A highway includes every public thoroughfare, "whether it be by carriage way, a horse way, a foot way, or a navigable river." Summerhill v. Shannon, 361 S.W.2d 271 (Ark. 1962).

"Roads" and "highways" are generic terms, embracing all kinds of public ways, such as county and township roads, streets, alleys, township and plank roads, turnpike or gravel roads, tramways, ferries, canals, navigable rivers Strange v. Board of Com'rs of Grant County, 91 N.E. 42 (Ind. 1910).

Highways, as they were originally developed, were for the convenience and easy passage of persons on foot, on horseback, in vehicles drawn by horses or oxen, and also for the transportation of commodities by the same means. They were open to unrestricted use by all persons. City of Rochester v. Falk, 9 N.Y.S.2d 343 (1939)

The word "highway" as ordinarily used means a way over land open to the use of the general public without unreasonable distinction or discrimination, established in a mode provided by the laws of the state where located. Lovelace v. Hightower, 50 N.M. 50, 168 P.2d 864 (1946).

Travel and transportation of goods by wheeled vehicles is not the only use to which a highway may be put. One walking or riding horseback, or transporting goods by pack horse, over a way which the public is constantly using, is a use of such a way as a highway. Hamp v. Pend Oreille County, 172 P. 869, 870 (Wash. 1918).

"User is the requisite element, and it may be by any who have occasion to travel over public lands, and if the use be by only one, still it suffices." Wilkenson v. Dept. of Interior, 634 F.Supp. 1265, 1272 (D. Colo. 1986).

"Highways" under 43 U.S.C. §932 can also be roads "formed by the passage of wagons, etc., over the natural soil." *Central Pacific Railway Co. v. Alameda County*, 284 U.S. 463, 467, 52 S.Ct. 225, 226, 76 L.Ed. 402 (1932). Id.

WHAT IS R.S. 2477?

- ◆ Revised Statutes 2477 (R.S. 2477) was a grant by Congress to the American public to establish access rights across the federal public lands. R.S. 2477, enacted in 1866, states that "the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."
- ◆ R.S. 2477 rights-of-way were created by the public or by state and local governments to provide public access across federal lands. All valid existing R.S. 2477 rights-of-way have been in existence since at least 1976, when the grant of R.S. 2477 was repealed. Many of these access routes have been used for over a century. Many are state highways. All are integral parts of the travel infrastructure that allows business people and other workers, search and rescue crews, law enforcement, hunters, campers, hikers, and all Americans to travel across the vast expanses of federal lands which dominate the West.
- ◆ R.S. 2477, like all easements, are property rights and are entitled to the same legal protection as any other property right.
- ◆ According to every court and administrative action which has directly addressed R.S. 2477 prior to now, state law provides the basis for determination of the existence and scope of R.S. 2477 rights-of-way.
- ◆ The scope of any R.S. 2477 right-of-way is defined by state law. Where state law has not established a specific scope, the common law of easements, also applied to these rights, defines the scope as that which is reasonable and necessary to provide safe travel for legitimate uses. Safety can only be provided by continued application of these state law standards.
- ◆ R.S. 2477 rights-of-way have been protected by every Congressional action taken for management of the public lands, including specifically the Federal Land Policy Management Act of 1976 (FLPMA), which repealed R.S. 2477.
- ◆ Federal regulatory authority over R.S. 2477 is limited by the obligation to honor the vested property right. Any action by Federal agencies to limit or divest these rights is contrary to established legal principles.
- ◆ The Department of Interior has published draft regulations purporting to provide a basis for administrative treatment of R.S. 2477 rights-of-way. These regulations would result in a substantial administrative reversal of long-established administrative policies, and would contravene established jurisprudence, moving a giant step toward elimination of historical rights of access to and across federal public lands.
- ◆ Settled methods of dealing with R.S. 2477 rights-of-way should not be changed. These rights-of-way were established by the public over a period of 110 years in reliance on the law and on administrative interpretations of the grant. Any change in these approaches would cause chaos in the many legal relationships which have been created on the basis of existing law. The regulations as proposed would also constitute an unfunded federal mandate by imposing new duties on state and local governments to protect their existing rights-of-way, while also imposing a new administrative burden on the federal agencies at taxpayer expense.

THE TRUE STORY ABOUT THE PROPOSED R.S. 2477 REGULATIONS

On August 1, 1994, the Department of the Interior released draft regulations which would unilaterally reverse long-standing court-made law, prior regulations, and state-federal relationships governing public access rights across federally owned lands.

Because federally owned lands constitute as much as 90% or more of some rural counties, the loss of access rights could have substantial impacts on the day-to-day activities of citizens and visitors.

Although the Department touts the new regulations as an effort to settle confusion, in fact the proposed regulations are designed to create confusion and controversy. They would force local governments, who have traditionally owned and maintained thousands of these rights-of-way, to undertake costly procedures, potentially including extensive litigation, to protect public access rights.

These burdensome new procedures will be required in spite of the fact that many of these same rights-of-way have been explicitly recognized by the Department in the past. No prior action of a state or local government or of the Department itself would be honored by the new regulations. In fact, even court rulings where the Department was a party will not be honored unless the holder first undertakes the new process which the Department now proposes.

The regulations do not promote an orderly process, as claimed. They would establish an excessively bureaucratic process clearly designed to burden the holders to the point where they are overwhelmed and give up. This intent is clear from the Department's statement that "[s]ome claimants may find the existing procedures under the Title V of FLPMA [the Federal Land Policy Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701 et seq.], or other statutory authorities, to be a more familiar and speedy process for resolving their right-of-way claims." This statement is misleading, since FLPMA addresses new applications which create new rights-of-way, while R.S. 2477 addressed rights-of-way which were perfected prior to October 21, 1976. FLPMA rights-of-way require an application which can be denied; R.S. 2477 rights-of-way are already perfected and cannot be denied, *unless the Department succeeds in finalizing these regulations.*

The proposed regulations far exceed any authority of the Department of Interior. In fact, they are explicitly forbidden by Congress, which said:

(Nothing in this title [FLPMA] shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title. (43 U.S.C. § 1769(a).)

The Department's hostility to these rights-of-way is made apparent by the fact that it wants to redefine the rights to eliminate many that were perfected under the terms by which the grant was offered, in addition to imposing a substantial burden on state and local governments in the form of documentation requirements and regulatory oversight. The Department would eliminate the

application of state laws which have been accepted for 128 years. After redefining the rights, the Department plans on taking over the role of the courts by determining which rights are valid and which are not, once again eliminating many rights-of-way in the process. In this way, the Department claims it can do a better job than the courts.

Under the new proposal, which mirrors the policies environmentalists have fought for, and lost on, in the courts, a whole new bureaucracy would have to be created just to handle the complex procedures these regulations would impose. And those actions would be conducted primarily by federal employees who have no prior experience with this issue and no knowledge of local history. This arrangement would be logical if the goal is to ignore the institutional knowledge which would support recognition of these rights. Under the new rules, it would be difficult, if not impossible to efficiently document these rights-of-way.

These prior existing R.S. 2477 rights-of-way are no more burdensome to the Department of Interior than any other property right which was granted by Congress. Most of the private property in the west was originally acquired from the federal domain. The Department must undertake its management duties with respect for property rights which were not retained by the federal government.

The State and local governments which manage these rights-of-way do not argue with their obligations to respect adjacent federal lands. Federal resources are protected by statutes governing endangered species, archeology, wetlands and related matters and local governments must honor those protections. Appropriate environmental review processes will also apply to R.S. 2477 improvement projects under the National Environmental Policy Act. The existence of R.S. 2477 rights-of-way does not defeat legitimate federal interests.

An honest presentation by the Department would disclose that continuation of past practices would be inconvenient to the Department of Interior, which desires to close off access whenever and wherever it chooses, regardless of the importance of that access to local economies and cultures. When all of the public relations hyperbole has settled, and the regulations are in place, Americans throughout the West, whether living there or visiting, will find their favorite fishing holes, canyons, hunting camps and hiking and jeep trails closed off.

It would be possible to create a process for determining which claims are valid that, unlike the proposed rules, would be based on a fair treatment of valid existing property rights, honoring long-standing precedent. But the proposed regulations fail to come close to a fair treatment of these rights-of-way and should be withdrawn. Otherwise, given the clear agenda of the Department of the Interior as presented in these draft regulations, the courts are the only forum where a fair treatment of these property rights might be obtained.



THE SECRETARY OF THE INTERIOR
WASHINGTON

RECEIVED
JAN 27 1997
Ans'd.....

JAN 22 1997

Memorandum

To: Assistant Secretary, Fish and Wildlife and Parks
Assistant Secretary, Land and Minerals Management
Assistant Secretary, Indian Affairs
Assistant Secretary, Water and Science

From: Secretary

Subject: Interim Departmental Policy on Revised Statute 2477 Grant of Right-of-Way for Public Highways; Revocation of December 7, 1988 Policy

Revised Statute 2477, which provided that "[t]he right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted," was repealed on October 21, 1976, by the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 *et seq.* FLPMA did not terminate valid rights-of-way established under R.S. 2477 prior to its repeal. The existence and extent of valid rights-of-way previously established pursuant to R.S. 2477 remains an issue in some places.

States or local governments asserting that R.S. 2477 rights-of-way exist on federal lands can in appropriate situations file a lawsuit in federal court seeking to establish the validity of that assertion. In the alternative or in advance of filing such a lawsuit, the Department of the Interior may also be asked to give its views on such assertions.

On December 7, 1988, Secretary Hodel signed a memorandum that discussed his policy for making determinations whether the Department would recognize claims for rights-of-way under R.S. 2477. That policy was not promulgated according to rulemaking procedures and is not a rule. In fact, because the Department has not been making such determinations in recent years, that policy has not been carried out for several years. The purpose of this memo is to revoke the 1988 policy and establish a revised policy for carrying out any determinations the Department might be called upon to make regarding R.S. 2477.

Background

At the request of Congress, the Department submitted a Report to Congress on R.S. 2477 in June 1993. In accordance with that Report's recommendations, the Department determined that regulations should be written for R.S. 2477, and a Notice of Proposed Rulemaking was published in 1994, 59 Fed. Reg. 39,216 (August 1, 1994). Thereafter, Congress attached a provision to the Department's appropriation for fiscal year 1996 that prohibited using funds appropriated by that statute for "developing, promulgating, and thereafter implementing a

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determines that construction did not occur, the agency will recommend the Secretary deny the claim.

4. **Highway.** The agency shall evaluate whether the alleged right-of-way constitutes a highway. A highway is a thoroughfare used prior to October 21, 1976, by the public for the passage of vehicles carrying people or goods from place to place. If the agency determines that the alleged right-of-way does not constitute a highway, the agency will recommend the Secretary deny the claim.

5. **Role of State Law.** In making its recommendations, the agency shall apply state law in effect on October 21, 1976, to the extent that it is consistent with federal law. The agency will in no case recommend approval of claims that do not comply with the requirements of applicable state law.

6. **Secretary's Determination.** The agency will make recommendations on the above-described issues to the Secretary. The Secretary will approve or disapprove those recommendations.

The December 7, 1988 policy, including attachment 1, is hereby revoked.



Bruce Babbitt



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ALASKA STATE OFFICE
222 W. 7th Avenue, #13
ANCHORAGE, ALASKA 99513-7599

1400 (910)

Dick Bishop
Alaska Outdoor Council
P.O. Box 73902
Fairbanks, AK 99707-3902

MAR 21 1997

Dear Mr. Bishop:

Thank you for inviting me to have lunch with you last week and discuss some of the Bureau of Land Management's (BLM) activities. The questions and discussion regarding R.S. 2477 underscore the interests of Alaskans in this issue.

An unanswered question was, "What is BLM doing with the R.S. 2477 assertions that were filed in Fairbanks and sent to the Anchorage office?" The answer is that we will serialize them just as we did in the Fairbanks office.

We then intend to sort them, statewide, by federal land ownership and send a copy to each of the other agencies if they are the federal land managing agency for the case, or share a land management responsibility for the case. For example, if the travel route is wholly on the Fish and Wildlife Service we will send a copy of the assertion to them. If the travel route touches on the BLM and/or the Fish and Wildlife Service and/or the Park Service, each will receive a copy of the assertion. The Council will be notified of the results of this process.

This process will notify the federal agencies of the Outdoor Council's assertion in the travel route. There remain several unanswered questions that need to be pursued over time. They include:

- Whether we must process, favorably or unfavorably in the context of the Secretary of Interior's guidance (copy enclosed), any of the assertions;
- Whether we ask the Outdoor Council for reasons why it is compelling to address a specific assertion(s) (ref. Secretary's guidance);
- Whether the State or the Council is prepared to assume the responsibility and liabilities associated with a travel route.

There are other questions as well; however, BLM is willing to work with the Council, the State, and other landowners to address access needs whether it be under R.S. 2477 or other authority. Once again, thanks for the invitation to visit with you and, I look forward to seeing you again.

Feel free to contact me or Dee Ritchie in our Fairbanks office if you have any questions.

Sincerely,



State Director

Division of Land Analysis - May 8, 1997
SB 180: An Act relating to state rights-of-way.

The Division of Land has been working on the RS2477 issue for many years supports the direction of the bill and seeks to work with the sponsor on its development.

Principle elements of the bill:

- * identifies DNR as regulatory authority for managing the RS2477 routes, unless transferred to DOTPF.
- * acknowledges that the research and identification process is incomplete
- * requires recordation of the 585 routes that potentially qualify as RS2477 routes
- * outlines procedures and restrictions for vacating RS2477 rights-of-way.

Section 1, paragraph (b) states that DNR "shall conduct the necessary research to identify rights-of-way." The RS2477 project was funded by the Legislature beginning in FY93 to identify, research and document potential RS2477 rights-of-way throughout the state. As of spring 1997, the DNR has identified approximately 585 routes that *potentially* qualify as RS2477 routes. This research is the first step in the process of certifying that a route meets the requirement of the federal grant. Finding additional information to qualify more routes and certify the 585 which have been judged to qualify will require more work, including travel to mining districts and communities, interviewing Alaskan pioneers, and investigating federal records. This will be a costly, but beneficial endeavor.

Section 1, paragraph (c) outlines acceptance of the RS2477 grant from the federal government. The State has a regulatory process in place to recognize the grant (11AAC51). This process is called "certification" and includes the following elements:

- * Nomination of a route by DNR
- * Title search to identify servient interests, such as mining claims or other private property interests,
- * 45-day public notice period to municipalities, federal and state agencies, coastal districts, land owners that might have a servient estate, village councils, etc. (by certified mail)
- * A decision by DNR, including findings of fact and conclusions of law, that the RS2477 ROW grant has been accepted. The decision also includes a determination of the location and width of the ROW in accordance with applicable law. This decision "constitutes recognition . . . of an RS2477 right-of-way grant" (11AAC51.060(e)).

Of the 585 routes that appear to qualify, only 11 have gone through this regulatory certification process and have been noticed to the federal government under the Federal Quiet Title Act. (180 day notice requirement) In addition, quiet title action against the Department of the Interior, Bureau of Land Management and 15 federal unpatented

mining claim owners has been filed on the Harrison Creek-Portage Creek Trail near Central, Alaska.

Because the state has not given public notice on the remaining 574 routes, this bill should advocate certification of these routes, including title searches, public notice, and written determinations instead of outright acceptance of the grant. This will meet the regulatory requirement for receipt of the RS2477 grant and is a valid process that will be recognized by a court of law.

Section 1 paragraph (d) lists the RS2477 rights-of-way that this bill intends to codify. As mentioned previously, some of these routes have minimal documentation. For example, more than 100 routes have only a single piece of evidence. This level of documentation has yet to be tested in court. Therefore, the certification process is even more important to verify that these trails indeed meet with the minimal standards of the federal grant.

Additionally, this paragraph limits the ability of the DNR to vacate rights-of-way. This affects the possibility of negotiating reasonable and constructable alternative routes among land owners and users as necessary. For example an RS2477 route may traverse terrain that is less buildable than a parallel route which could be traded for the vacation of the RS2477 route.

Section 2 mandates the recording of each right-of-way identified in this bill but eliminates the *Formal requisites for recording* under AS 40.17.030. Without an in-depth title search, departmental certification, and surveying, recording routes with insufficient information could result in the clouding of title for hundreds of Alaskans who may not be directly affected by the RS2477 right-of-way. Should a lawsuit be filed that challenges the State on the validity of an RS2477, the court could easily find against the State for not following the established regulatory (certification) and statutory (recordation) processes.

A possible amendment to these proposed statutes may be to provide a wide range of criteria to establish and manage routes with a contemporary interpretation of historic uses. Alaska Statutes could be modeled after the State of Utah's RS2477 statutes. Utah takes an aggressive position related to RS2477 and is similar to the direction advocated by this proposed legislation. An amendment could provide a policy and methodology based upon previous court cases in the 9th and 10th Circuits. While Alaska is not in the 10th circuit, we can choose to adopt the decisions found in *Sierra v. Hodel* (848 F.2d 1068, 10th Cir. 1988) and similar cases.

In Utah the state has also engaged in active management of the RS2477 routes and has forced the Federal government to try to stop them in court. If Alaska were to engage in such practices, some options for action could include:

- * survey and flagging routes to avoid trespass on adjacent property
- * developing a management strategy addressing allowed uses of the routes

- * publishing brochures, atlases, or other information fact sheets that encourage deliberate use of the routes.
- * signage on routes advising the public of their right to use the routes.

Each route should be evaluated to determine the highest and best use of the right-of-way according to its contemporary purpose. The State should retain the flexibility to manage routes for uses ranging from foot passage to paved highway systems. A long-term plan could certify, survey, and manage these trails within budgetary constraints. A management plan would allow the state to pace itself with certifications that should be accomplished on an annual basis.

In conclusion, DNR is available to work with the sponsor and other members on SB 180. We would prefer not to record all 585 routes at this time because we need to "certify" the routes prior to recordation. To date there are 11 which have been certified. Additionally, we recommend that the other 574 not be recorded, because it could unnecessarily cloud the title of third parties, who may ultimately be unaffected by the route once its location is established by survey. In the meantime they would not be able to sell or encumber their land because of this cloud.

The Division staff are available to work on this very important issue.

Jane Angvik
Director, Division of Land



Resource Development Council for Alaska, Inc.

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503-2035
(907) 276-0700 Fax: (907) 276-3887 e-mail: rdc@aonline.com

Founded 1975

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Kenneth J. Freeman

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- Congressman Don Young
- Governor Tony Knowles

January 21, 1998

Senator Rick Halford, Chairman
Senate Resources Committee
State Capitol
Juneau, AK 99801

Dear Senator Halford:

RE: Support for SB 180, relating to RS 2477 rights-of-way.

The Resource Development Council supports SB 180 and urges its passage. RDC has long supported actions to designate and settle historic RS 2477 rights-of-way across public lands in Alaska while respecting private property rights. RS 2477 remains one of the most useful access tools for Alaskans to cross federal lands, as historically done.

Throughout Alaska, people depend on RS 2477 routes for access to public and private land, and to the resources of that land. Over 560 potential rights-of-way have been documented around the state.

Alaska needs to protect its RS 2477 rights and RDC believes SB 180 will help accomplish that goal. SB 180 is needed to move the process along and ensure Alaska's historic rights of access are maintained.

Sincerely,

**RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.**

Ken Freeman
Executive Director

cc: Senator Mike Miller
Representative Bill Hudson
Representative Scott Ogan
Speaker Gail Phillips
Representative Pete Kott



MAY 05 1997
ALASKA OUTDOOR COUNCIL

211 4th St. #302A
Juneau, Ak. 99801
(907) 463-3830
FAX 586-6020

Senator Rick Halford
Alaska State Senate
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

5 May, 1997

Dear Senator Halford:

The Alaska Outdoor Council has reviewed Senate Bill 180, "An act relating to state rights-of-way" and very strongly supports it.

SB 180 takes a giant step forward in addressing the Outdoor Council's concerns about the loss of public access on public and potentially private lands through government antipathy and/or inaction. Assertion of RS 2477 rights-of-way is necessary because other provisions of law, particularly federal law, are too weak to reliably protect public access.

Sec. 19.30.400 (c) is an essential part of the bill. It makes clear that the rights-of-way identified in the bill are not the end of the story. As you know, there are over a thousand additional trails that may qualify as RS 2477 rights-of-way and demand review.

The Council also recognizes the importance of Sec. 19.30.410. The state's responsibility for providing public access under RS 2477 provisions must be institutionalized to preclude politically motivated backsliding.

The protection of legal public access on and across federal lands is the "compelling need" which the Department of Interior claims is essential for its consideration of RS 2477's. These rights-of-way enable Alaskans to go about their daily lives. In most cases this simply means the use of trails, rather than modern highways, but the latter should not be arbitrarily excluded.

The protection of an RS 2477 should not be denied on the excuse that it is not part of a formal state transportation system plan. The law provides that public use of a route verifies its RS 2477 eligibility. Public use is the practical evidence of logical access needs, even though use may be intermittent over time, or may change in nature.

The Council is also concerned about state access policy in general. It is not clear that providing for public access is given enough weight when considering other legal avenues, such as section line easements or identification and retention of 17(b) easements under ANSCA. The current uproar over public access to the Situk River near Yakutat dramatizes the need for the state to act in anticipation of obstacles to legitimate public access. But all of that is not directly related to SB 180.

The Alaska Outdoor Council sincerely appreciates your efforts to introduce SB 180, and unequivocally supports the bill.

Sincerely,

Richard H. Bishop
Executive Director
Alaska Outdoor Council

cc: Senator Miller
President of the Senate
Representative Phillips
Speaker of the House



P.O. Box 20761, Juneau, Alaska 99802

Phone/FAX (907) 789-2399

April 21, 1997

Senator Rick Halford
State Capitol
Juneau, AK 99801-1182

Dear Senator Halford:

The Territorial Sportsmen would like to go on record as strongly supporting SB 180, "An Act Relating to State Rights-of-Way."

Territorial Sportsmen, Inc. is a Juneau based sportsmen/conservation organization. Our organization has been in existence for over 50 years and is dedicated to good resource management and sound conservation principles. Our membership numbers over 1,500. The Territorial Sportsmen are committed to the protection of public access to public lands and supports the recognition and protection of RS 2477 rights-of-way.

We are fully aware of the legislature's long standing recognition of the importance of RS 2477 rights-of-way to the future of our state. Quite frankly, we are convinced that without the strong support, including funding, by the legislature, the volumes of material accumulated supporting the hundreds of legitimate RS 2477 rights-of-ways would not have been completed.

We are also aware of the potential litigation that may ensue from this type of proactive position by the state. Regardless, we consider legal confrontations with the federal government essential to producing long term access options for the state and, thus, we encourage the Legislature to proceed with this effort. We agree that codifying these routes will strengthen the state's position and provide reasonable notice to the general public.

In closing, we recognize that this list of routes covers the best documented rights-of-ways. We are hopeful that the legislature and the administration will continue to pursue documentation of the remaining routes for later assertion by the state.

Sincerely,

A handwritten signature in cursive script that reads "Ron Somerville".

Ron Somerville
President



JAN 26 1998

ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

January 17, 1998

Honorable Rick Halford
Chairman, Senate Resources Committee
Capitol Building
Juneau, AK 99801

RE: Senate Bill 180, Relating to State Rights-of-Way

Dear Senator Halford,

Thank you for the opportunity to comment on your Senate Bill 180 which relates to Revised Statute 2477 rights-of-way. The Alaska Miners Association supports this bill and very much appreciates that you have addressed this important matter.

The Alaska Miners Association, its members and predecessors have been intimately involved in the issue of RS-2477 rights-of-way since before the days of the Klondike Gold Rush and up through the present time. By virtue of the U.S. Congress's grant known as RS-2477, the roads and trails established by the miners are now rights-of-way owned by the State of Alaska. SB-180 will help ensure that these rights are protected and that the necessary legal/technical steps are completed in a timely manner. Over the past several years the State and the public have worked hard to document usage of these roads and trails but there has remained uncertainty over precisely how they must be "accepted" or "asserted" to ensure that they remain State property. SB-180 should remove this uncertainty.

There is one area where you may wish to consider changes to SB-180. This involves "vacation of rights-of-way". It would be of value to give the Department of Natural Resources authority to (but not require) write regulations establishing the procedural steps required to vacate rights-of-way. This will be especially important where Native-owned or other private lands are invoked.

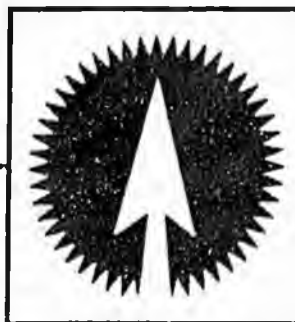
Thank you for the opportunity to comment on this important bill. Please contact me if you have any questions or if there is anything we can do to assist this legislation in become law.

Sincerely,

Steven C. Borell, P.E.
Executive Director

APR 28 1997

Alaska Forest Association, Inc.



111 STEDMAN SUITE 200
KETCHIKAN, ALASKA 99901-6599
Phone 907-225-6114
FAX 907-225-5920

April 25, 1997

Honorable Rick Halford
Alaska State Senate
State Capitol
Juneau, AK 99801

Dear Senator Halford:

Rick

Thank you for sharing with me SB 180, "An Act relating to rights-of-way." I agree with you that securing RS 2477 rights-of-way is critical to the future development of Alaska, and therefore must be pursued with vigor by Alaska's elected leadership. SB 180, as drafted, is an excellent move in that direction.

I see no better alternative to the approach you have taken in this bill, *viz.*, to specifically identify each accepted right-of-way within the state and require in statute the vigorous pursuit of the state's claim to these corridors. It is extremely important to prevent an arbitrary or politically motivated agency action from surrendering Alaskans' perpetual right to have access to the various parts of our state.

Finally, I think that your proposed AS 19.30.410 is a very important part of this bill. It is comparable to AS 38.05.300 which, you will recall, we rewrote in 1993 to assert the prerogative of the legislature to make the final call on major land use actions with respect to mining.

I thank you for introducing this legislation, and for the opportunity to comment on it. I hope this letter will do some small part toward helping SB 180 become law.

Sincerely,

Jack E. Phelps
Executive Director

CHAPTER 051

NOMINATION, IDENTIFICATION, AND MANAGEMENT OF RS 2477 RIGHTS-OF-WAY

11 AAC 51.010

PURPOSE AND APPLICABILITY.

The purpose of this chapter is to set forth the procedures to nominate, identify, and certify public rights-of-way established under 43 U.S.C. 932 (RS 2477). This chapter is applicable only to rights-of-way that may exist as a result of RS 2477.

History -

Eff. 5/14/92, Register 122

Authority -

AS 38.04.058

AS 38.04.900

AS 38.05.020

AS 38.05.035

11 AAC 51.020

NOMINATION APPLICATION.

(a) A person, government agency, or entity may nominate an RS 2477 right-of-way for certification by the department.

(b) Any nomination made under (a) of this section must be made by application to the department and must

(1) be submitted to the department on a form provided by the department;

(2) contain complete and correct information to the best of the applicant's

knowledge;

(3) if known, contain the name of the nominated right-of-way;

(4) provide the general geographic description of the area where the nominated right-of-way is located;

(5) identify as precisely as possible the complete location and length of the nominated right-of-way, including the location of its route from beginning to end;

(6) identify as precisely as possible the date or the time frame that the nominated right-of-way was initially used by the public;

(7) include the application fee required by 11 AAC 05.010.

(c) To the extent practicable an application nominating a right-of-way must

(1) contain reliable historical accounts that make reference to the nominated right-of-way;

(2) contain a list of known persons, who can supply knowledge of the historical use of the nominated right-of-way; the list should include each person's last known address

and telephone number, if possible;

(3) identify the location of the entire length of the nominated right-of-way on a United States Geological Survey map at 1:63,360 scale (1 inch = 1 mile) or its equivalent;

(4) identify the purpose of the access, including mining, residential, or recreation; type of access, including foot, dogsled, all-terrain vehicle, heavy equipment, or automobile; and season of use, including summer, winter, or year-round.

(d) No more than one contiguous right-of-way or one non-contiguous right-of-way consisting of one continuous route may be nominated for certification in a single application.

(e) A government agency, including a state agency, may nominate for certification under this section any RS 2477 right-of-way that was submitted to the federal government for federal recognition before 5/14/92.

History -

Eff. 5/14/92, Register 122

Authority -

AS 38.04.058

AS 38.04.900

AS 38.05.020

AS 38.05.035

11 AAC 51.030

IDENTIFICATION AND NOTIFICATION.

(a) Upon the receipt of a completed application, the department will establish a case file and assign the case file a right-of-way management identification number. The case file will contain materials received by the department concerning a nominated right-of-way, including materials received during the comment period under (e) and (f) of this section and appeals to the commissioner.

(b) After receiving a completed application, the department will transmit the notice and copy of the application by certified mail to the following entities, if applicable:

(1) the municipality within whose boundaries the nominated right-of-way is located;

(2) the federal agency or state agency that has management responsibility for the land underlying the route of the nominated right-of-way;

(3) the coastal management district or coastal management service area in which the nominated right-of-way is located;

(4) the land owners whom the department reasonably considers might have a servient estate in relation to the nominated right-of-way; and

(5) the appropriate village council or community association.

(c) If the notice and copy of the completed application is returned as undeliverable, the department will consider that notice and application as delivered for purposes of this chapter.

(d) When the department gives notice under (b) of this section, the department will publish a summary of the nomination application in one newspaper with general circulation in the area of the route of the nominated right-of-way.

(e) A person, a government agency, an organization, or another interested party receiving

notice under this section, has 45 days from the date of mailing of the notice under (b) of this section or from the date of publication under (d) of this section, whichever is later, to provide the department with written comments relating to the acceptance, location, or historical use of the nominated right-of-way. The comments must be received by the department by the deadline set in this subsection in order to be considered by the department.

(f, A notice of the RS 2477 nomination and a vicinity map showing the general location of the nominated route will be mailed by the department to other interested persons or organizations that the department reasonably considers have an interest in or may be affected by the nominated right-of-way. In that notice, the department will provide an opportunity for comment on the nominated right-of-way to those persons specified in this subsection.

History -

Eff. 5/14/92, Register 122; am 11/10/93, Register 128

Authority -

AS 38.04.058

AS 38.04.900

AS 38.05.020

AS 38.05.035

11 AAC 51.040

EVALUATION PROCEDURE.

(a) Within 90 days after the close of the comment period for a completed application, the department will take one of the following actions:

(1) render a written decision under 11 AAC 51.060(d) on the application;

(2) request additional information from the applicant or other interested individuals or organizations;

(3) repealed 11/10/93.

(b) If the department requests additional information under (a)(2) of this section, the department shall render a written decision under 11 AAC 51.060(d) after receiving the requested information.

(c) Repealed 11/10/93.

History -

Eff. 5/14/92, Register 122; am 11/10/93, Register 128

Authority -

AS 38.04.058

AS 38.04.900

AS 38.05.020

AS 38.05.035

11 AAC 51.050

INFORMAL ADJUDICATORY PROCEEDING

Repealed or Renumbered
Repealed.

History -
Eff. 5/14/92, Register 122; repealed 11/10/93, Register 128

11 AAC 51.060

EVALUATION CRITERIA FOR DEPARTMENTAL DECISION.

(a) The department will certify the RS 2477 right-of-way nominated in the application if the department finds that the requirements of this chapter and other applicable law have been met for the valid acceptance of an RS 2477 right-of-way grant.

(b) In determining if the requirements of this chapter and other applicable law have been met for the valid acceptance of an RS 2477 grant of a public right-of-way, the department will consider

(1) if sufficient evidence has been presented to allow the nominated RS 2477 right-of-way to be located on a United States Geological Survey topographical map;

(2) if sufficient evidence has been presented to show that the nominated RS 2477 right-of-way crossed public land that was not reserved for public use at the time the RS 2477 right-of-way grant is alleged to have been accepted; and

(3) if sufficient evidence has been presented

(A) to show that the public use or construction of the nominated RS 2477 right-of-way constitutes acceptance of the RS 2477 right-of-way grant in accordance with other applicable law, or

(B) when relevant, to show the existence of a positive act on the part of a public authority that constitutes acceptance of the RS 2477 right-of-way grant in accordance with applicable law.

(c) When the department finds under (a) of this section that the requirements of this chapter and other applicable laws have been met for the valid acceptance of an RS 2477 right-of-way grant, the department will determine the location and width of the right-of-way in accordance with applicable law.

(d) The department will prepare a written decision, including findings of fact and conclusions of law, concerning an application nominating an RS 2477 right-of-way. The department will send a copy of its decision to the applicant and the individuals or organizations noticed under 11 AAC 51.030(b), including a notification of the right to appeal the decision.

(e) A decision under (d) of this section certifying all or part of an RS 2477 right-of-way nominated in an application constitutes recognition by the state of the valid acceptance of an RS 2477 right-of-way grant.

History -
Eff. 5/14/92, Register 122; am 11/10/93, Register 128

Authority -
AS 38.04.058
AS 38.04.900
AS 38.05.020

AS 38.05.035

11 AAC 51.070

APPEAL.

A person, a government agency, or another entity that disagrees with a decision of the department made under 11 AAC 51.060 may appeal to the commissioner under 11 AAC 02.

History -

Eff. 5/14/92, Register 122

Authority -

AS 38.04.058

AS 38.04.900

AS 38.05.020

AS 38.05.035

11 AAC 51.080

FINAL DECISION AND JUDICIAL APPEAL.

A final agency decision by the commissioner under 11 AAC 02 may be appealed to the superior court in accordance with the Alaska Rules of Appellate Procedure.

History -

Eff. 5/14/92, Register 122

Authority -

AS 38.04.058

AS 38.04.900

AS 38.05.020

AS 38.05.035

11 AAC 51.090

CLASSIFICATION.

The department will refer an RS 2477 right-of-way that is certified under this chapter and that is not on the Alaska highway system, to the Alaska Department of Transportation and Public Facilities for classification under 17 AAC 05.

History -

Eff. 5/14/92, Register 122

Authority -

AS 38.04.058

AS 38.04.900

AS 38.05.020

AS 38.05.035

11 AAC 51.100

MANAGEMENT OF RS 2477 RIGHTS-OF-WAY.

(a) The commissioner has management authority over the use of any RS 2477 right-of-way that is not on the Alaska highway system. Certain land use actions on RS 2477 rights-of-way, including road construction, may require a permit under 11 AAC 96.010, or other authorization by the department. Based on a written determination by the commissioner, the commissioner will, in the commissioner's discretion, close or restrict the use of an RS 2477 right-of-way over which the commissioner has management authority in order to

- (1) protect public safety;
- (2) protect the right-of-way and the servient estate against damage that may be caused by use during storms, floods, thawing conditions, or construction and maintenance operations; or

(3) protect or manage other resources in or near the right-of-way.

(b) If the commissioner closes or restricts the use of an RS 2477 right-of-way under (a) of this section, the department will

(1) post notice in a conspicuous place near the right-of-way of the closure or restricted use of the right-of-way and, at the department's discretion, place a barrier or obstruction on the right-of-way;

(2) post signs in a conspicuous place near the right-of-way indicating the location of any alternative routes.

(c) Any decision made under (a) to close or restrict the use of an RS 2477 right-of-way may be appealed under 11 AAC 02.

(d) The commissioner and the commissioner of the Alaska Department of Transportation and Public Facilities, by agreement, will determine if an RS 2477 right-of-way managed under this section will be transferred to the Alaska Department of Transportation and Public Facilities or to a local government for management purposes.

History -

Eff. 5/14/92, Register 122; am 11/10/93, Register 128

Authority -

AS 38.04.058

AS 38.04.900

AS 38.05.020

AS 38.05.027

AS 38.05.035

11 AAC 51.900

DEFINITIONS.

As used in this chapter,

- (1) "Alaska highway system" means those roads compiled on the list described in

17 AAC 05.010;

(2) "application" means an RS 2477 right-of-way nomination application;

(3) "commissioner" means the commissioner of the Department of Natural Resources;

(4) "completed application" means an RS 2477 right-of-way nomination application furnished by the Department of Natural Resources that is completed by an applicant in accordance with the instructions on the application;

(5) "department" means the Department of Natural Resources;

(6) "resources" means timber, minerals, watershed, wildlife and fish, and any natural or man-made feature that has scenic, scientific, or historical value;

(7) "servient estate" means land that is subject to an RS 2477 right-of-way.

History -

Eff. 5/14/92, Register 122

Authority -

AS 38.04.058

AS 38.04.900

AS 38.05.020

AS 38.05.027

AS 38.05.035