TITLE 11. NATURAL RESOURCES.
PART 1. OFFICE OF THE COMMISSIONER.
CHAPTER 05. FEES FOR DEPARTMENT SERVICES.

11 AAC 05.010(a)(7)(H) is repealed:

(H) repealed 5/3/2001;

(Eff. 1/1/86, Register 96; am 8/10/86, Register 99; am 9/28/86, Register 99; am 8/23/87, Register 103; am 1/28/88, Register 105; am 7/1/89, Register 110; addt'l am 7/1/89, Register 110; am 8/16/89, Register 111; am 12/9/89, Register 112; am 1/17/90, Register 113; am 3/16/91, Register 117; am 12/25/91, Register 120; am 5/14/92, Register 122; am 9/16/92, Register 123; am 4/18/93, Register 126; am 5/5/93, Register 126; am 10/1/94, Register 131; am 12/13/95, Register 136; am 2/16/96, Register 137; am 5/24/96, Register 138; am 5/18/97, Register 142; am 2/21/98, Register 145; am 7/29/98, Register 147; am 8/26/98, Register 147; am 9/10/98, Register 147; am 1/29/99, Register 149; am 5/9/99, Register 150; am 2/9/2001, Register 157; am 5/3/2001, Register 158)

Authority:			
	AS 03.10.020	AS 38.05.295	AS 40.17.030
	AS 09.25.110	AS 38.05.600	AS 41.06.020
	AS 27.21.030	AS 38.05.850	AS 41.21.020
	AS 27.21.940	AS 38.08.110	AS 41.21.026
	AS 38.04.045	AS 38.09.020	AS 41.23.440
	AS 38.04.900	AS 38.09.110	AS 44.37.020
	AS 38.05.020	AS 38.35.020	AS 44.37.025
	AS 38.05.035	AS 38.35.050	AS 45.50.315
	AS 38.05.057	AS 38.50.160	AS 46.15.020
	AS 38.05.082	AS 38.95.240	AS 46.15.035
	AS 38.05.177	AS 40.15.370	AS 46.15.037
	AS 38.05.180		

PART 6. LANDS.

Chapter

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51. **Public Easements (11 AAC 51.010 - 11 AAC 51.990)** [NOMINATION, IDENTIFICATION, AND MANAGEMENT OF RS 2477 RIGHTS-OF-WAY (11 AAC 51.010 - 11 AAC 51.900)]

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CHAPTER 51. PUBLIC EASEMENTS [NOMINATION, IDENTIFICATION, AND MANAGEMENT OF RS 2477 RIGHTS-OF-WAY].

Article

1. Applicability of Chapter (11 AAC 51.010)
2. Identification, Reservation, and Modification of Public Easements (11 AAC 51.015 - 11 AAC 51.100)
3. (Reserved)
4. General Provisions (11 AAC 51.900 - 11 AAC 51.990)

ARTICLE 1. APPLICABILITY OF CHAPTER.

Section

10. Purpose and applicability
[20. NOMINATION APPLICATION
30. IDENTIFICATION AND NOTIFICATION
40. EVALUATION PROCEDURE
50. (REPEALED)
60. EVALUATION CRITERIA FOR DEPARTMENTAL DECISION
70. APPEAL
80. FINAL DECISION AND JUDICIAL APPEAL
90. CLASSIFICATION
100. MANAGEMENT OF RS 2477 RIGHTS-OF-WAY
900. DEFINITIONS]

11 AAC 51.010 is repealed and readopted to read:

11 AAC 51.010. PURPOSE AND APPLICABILITY. (a) This chapter applies to each public easement

(1) reserved by the department or granted to the state, including each right-of-way established under R.S. 2477 or other authority; and

(2) managed by the department under AS 38.

(b) For purposes of this chapter, a public easement

(1) includes any interest in land that is not possessory and that, upon land that may be owned by another person, is reserved by the department or granted to the state for use by or the benefit of the public, including an access easement, survey easement, and utility easement; and

(2) does not include

(A) full ownership of all rights in a strip or corridor of land; or

(B) a negative easement.

(c) Construction or use of a road, trail, or other access improvement on state land does not create an easement. By authorizing construction of a temporary road or casual-use trail under 11 AAC 96 the department does not grant or reserve a public easement.

(d) Unless and until it is vacated, a public easement is a valid existing right, even if the land subject to the easement is conveyed by or was never owned by the state.
(Eff. 5/14/92, Register 122; am 5/3/2001, Register 158)

Authority:	**AS 38.04.050**	AS 38.04.900	**AS 38.05.127**
	AS 38.04.055	AS 38.05.020	**AS 38.05.850**
	AS 38.04.058	AS 38.05.035	

ARTICLE 2. IDENTIFICATION, RESERVATION, AND MODIFICATION OF PUBLIC EASEMENTS.

Section

15. Standards for easements
20. (Repealed)
25. Section-line easements
30. (Repealed)
35. Determination of navigable and public water
40. (Repealed)
45. Easements to and along navigable and public water
50. (Repealed)
55. Identification of R.S. 2477 rights-of-way
60. (Repealed)
65. Vacation of easements
70. (Repealed)
75. Surveying and field marking of easements
80. (Repealed)
85. Access and utility easements to mental health land
90. (Repealed)
100. Management of public easements, including R.S. 2477 rights-of-way

11 AAC 51 is amended by adding a new section to read:

11 AAC 51.015. STANDARDS FOR PUBLIC EASEMENTS. (a) Before selling, leasing, or otherwise disposing of the land estate, the department will reserve public easements under this section. The department will require survey and platting under 11 AAC 53 of a public easement reserved under this section, unless survey is unnecessary to determine the easement's location, as in the case of an easement tied to a surveyed property boundary, the ordinary high water mark, or the mean high water line.

(b) In addition to the circumstances set out in (a) of this section, the department will require survey of a public easement on land

(1) that the department does not manage under AS 38, if required under 11 AAC 51.100(g); or

(2) presently not intended for sale, lease, or other disposal, as the department determines necessary to resolve uncertainty over the easement's relationship to a property boundary.

(c) The dedication to public use, on a plat approved by a municipal platting authority, of a public easement reserved by or granted to the state does not convey to the municipality

(1) an R.S. 2477 right-of-way, a section-line easement under AS 19.10.010, or an access easement reserved under AS 38.05.127; or

(2) a public easement other than one described in (1) of this subsection, unless the department specifically expresses in a final disposal decision under AS 38.05.035(e) its intent to convey the public easement.

(d) Before selling, leasing, or otherwise disposing of the land estate, the department will reserve

(1) public easements in the following minimum widths, except that a platting authority or the department may set a different width to address special conditions, including topography, difficult soils, or the presence of existing improvements:

(A) for a utility easement, 30 feet;

(B) for a pedestrian easement, 25 feet;

(C) for an arterial road, 100 feet;

(D) for a neighborhood service road, 60 feet;

(E) for an existing road that does not already have a reserved easement, 60 feet;

(2) a survey easement at least five feet wide from the nearest practical point on the property boundary to a survey control station; a survey easement reserved under this paragraph includes

(A) an easement with a radius of five feet around the control station; and

(B) as applicable, a five-foot wide direct line-of-sight easement from the control station to an azimuth mark or other control station;

(3) access easements, in the minimum widths set out in 11 AAC 51.045, to and along navigable and public water; and

(4) public easements along section lines in the widths set out in 11 AAC 51.025.

(e) The department may reserve additional public easements as the department considers necessary and in accordance with applicable law, and may determine the location, size and type of those public easements. (Eff. 5/3/2001, Register 158)

Authority:	AS 38.04.045	AS 38.04.900	AS 38.05.035
	AS 38.04.050	AS 38.05.020	AS 38.05.127
	AS 38.04.055		

Editor's note: The subject matter of 11 AAC 51.015 was formerly located at 11 AAC 53.300. The history note for 11 AAC 51.015 does not reflect the history of the earlier section.

11 AAC 51.020 is repealed:

11 AAC 51.020. NOMINATION APPLICATION. Repealed. (Eff. 5/14/92, Register 122; repealed 5/3/2001, Register 158)

11 AAC 51 is amended by adding a new section to read:

11 AAC 51.025. SECTION-LINE EASEMENTS. (a) In accordance with AS 19.10.010, before selling, leasing, or otherwise disposing of the surveyed or unsurveyed land estate, the department will reserve along each section line public easements in the following widths:

(1) if the section line forms a boundary of the parcel being disposed, 50 feet measured from the section line;

(2) if the section line runs through the parcel being disposed, 50 feet measured on each side of the section line, for a total width of 100 feet.

(b) Whether reserved by the department or granted to the state, a section-line easement continues to exist unless and until it is vacated under 11 AAC 51.065, regardless of whether that easement is in use.

(c) Nothing in this chapter affects or modifies the existence and width of any section-line easement as established by ch. 19, SLA 1923, ch. 123, SLA 1951, ch. 35, SLA 1953, and AS 19.10.010, as applicable. (Eff. 5/3/2001, Register 158)

Authority: AS 38.05.020 AS 38.05.035 AS 19.30.400

Editor's note: The provisions of ch. 19, SLA 1923, ch. 123, SLA 1951, ch. 35, SLA 1953, and AS 19.10.010 apply to the existence and width of any section-line easements on federal or state lands. The existence and width of any section-line easement that arose, varies in accordance with the statute in effect on the date of the creation of the easement. The following calculations of widths, as measured from the section line and derived from the relevant statutes, are provided below as guidance, but do not alter the legal existence, extent, or terms of any section-line easement:

1. for public lands in the Territory of Alaska before April 6, 1923, section-line easements did not arise by operation of statute;

2. for surveyed land owned by the Territory of Alaska at any time on or after April 6, 1923 through Jan. 17, 1949, or for surveyed federal land that was unappropriated and unreserved at any time during that period, the identified in ch. 19, SLA 1923 for any section-line easement is 33 feet;

3. for any land owned by the Territory of Alaska at any time on or after January 18, 1949 through March 25, 1951, section-line easements did not arise by operation of statute;

4. for federal land at any time on or after January 18, 1949 through March 20, 1953, section line easements did not arise by operation of statute;

5. for any surveyed land owned by the Territory of Alaska or the state on or after March 26, 1951 through June 30, 1960, the width identified in ch. 123, SLA 1951 for any section-line easement is 50 feet;

6. for surveyed federal land that was unappropriated and unreserved at any time on or after March 21, 1953 through December 14, 1968, the width identified in ch. 35, SLA 1953 for any section-line easement is 33 feet;

7. for surveyed or unsurveyed land owned by the state on or after July 1, 1960, the width, as identified in AS 19.10.010, is 50 feet.

For purposes of calculating the widths for section-line easements, "each section of land," as used in ch. 19, SLA 1923 is read to mean each section of surveyed land owned by the Territory of Alaska, and each section of surveyed, unappropriated, unreserved federal land open to the grant of a right-of-way under R.S. 2477. As used in ch. 35, SLA 1953, and AS 19.10.010, "all other sections" is read to include all sections of surveyed, unappropriated, unreserved federal land open to the grant of a right-of-way under R.S. 2477. An easement, if any, may exist on each side of a section line. Depending on land status on each side of the section line, the total easement width may be 33 feet, 50 feet, 66 feet, 83 feet, or 100 feet.

11 AAC 51.030 is repealed:

11 AAC 51.030. IDENTIFICATION AND NOTIFICATION. Repealed. (Eff. 5/14/92, Register 122; am 11/10/93, Register 128; repealed 5/3/2001, Register 158)

11 AAC 51 is amended by adding a new section to read:

11 AAC 51.035. DETERMINATION OF NAVIGABLE AND PUBLIC WATER. (a) As part of a preliminary or proposed written decision under AS 38.05.035(e) before the sale, lease, grant, or other disposal of any interest in state land, the department will determine whether water adjacent to or contained within the land intended for disposal is navigable water, public water, or neither under AS 38.05.127. However, if the preliminary or proposed written decision is for an oil and gas lease or a mineral lease, the determination under this section and reservation of access easements under 11 AAC 51.045 may be postponed until the lessee proposes, within 100 feet upland from the ordinary high water mark or mean high water line, lease facilities or lease development activities involving surface entry.

(b) For purposes of the determination under (a) of this section and for reserving access easements under 11 AAC 51.045, a water body at least 50 acres in size or a waterway at least 50 feet in width from the ordinary high water mark to the ordinary high water mark will be considered navigable water. The commissioner may determine that a water body smaller than 50 acres or a waterway smaller than 50 feet in width is navigable water.

(c) For purposes of the determination under (a) of this section and for reserving access easements under 11 AAC 51.045, a water body at least 10 acres but less than 50 acres in size or a waterway at least 10 feet but less than 50 feet in width from the ordinary high water mark to the ordinary high water mark will be considered

(1) navigable water if the department finds that the water body or waterway is navigable in fact for a useful public purpose under AS 38.05.965; or

(2) public water if the department does not make a finding described in (1) of this subsection.

(d) The commissioner may determine that a water body smaller than 10 acres in size or a waterway smaller than 10 feet in width from the ordinary high water mark to the ordinary high water mark is public water. (Eff. 5/3/2001, Register 158)

Authority: AS 38.04.005 AS 38.04.900 AS 38.05.035
AS 38.04.055 AS 38.05.020 AS 38.05.127

Editor's note: The subject matter of 11 AAC 51.035 was formerly located at 11 AAC 53.310 and 11 AAC 53.320. The history note for 11 AAC 51.035 does not reflect the history of the earlier sections.

11 AAC 51.040 is repealed:

11 AAC 51.040. EVALUATION PROCEDURE. Repealed. (Eff. 5/14/92, Register 122; am 11/10/93, Register 128; repealed 5/3/2001, Register 158)

11 AAC 51 is amended by adding a new section to read:

11 AAC 51.045. EASEMENTS TO AND ALONG NAVIGABLE AND PUBLIC WATER. (a) As part of a preliminary or proposed written decision under AS 38.05.035(e) before the sale, lease, grant, or other disposal of any interest in state land the department will

(1) list or map the access easements that the department proposes to reserve under this section for public access to and along water determined under 11 AAC 51.035 to be navigable or public water; or

(2) state why reserving an access easement is not necessary to ensure free access to and along water determined under 11 AAC 51.035 to be navigable or public water or why regulating or limiting access is necessary for other beneficial uses or public purposes.

(b) In its final written decision under AS 38.05.035(e), the department will incorporate the list or map prepared under (a)(1) of this section or, in response to public comments or other information known to the department, will incorporate a modified version of that list or map. Unless the final decision under AS 38.05.035(e) determines that reserving an access easement is not necessary to ensure free access to and along the water or that regulating or limiting access is necessary for other beneficial uses or public purposes, the department will reserve access easements as required by this section.

(c) Before the department grants a lease of the land estate or conveyance of land adjacent to any water affected by tidal action, the department

(1) will reserve along that water an access easement that

(A) is continuous, unless topography or land status prevents a continuous easement; and

(B) extends at least 50 feet from the mean high water line on the side to be leased or conveyed, and on both sides of the mean high water line if land on both sides is to be leased or conveyed; and

(2) may reserve an alternative upland access route, if the department finds that access along an easement reserved under (1) of this subsection might be difficult because of topography or obstructions.

(d) Before the department grants a lease of the land estate or conveyance of land adjacent to or containing any inland water determined under 11 AAC 51.035 to be navigable water, the department

(1) will reserve along that water an access easement that

(A) is continuous, unless topography or land status prevents a continuous easement; and

(B) extends at least 50 feet upland from the ordinary high water mark;

(2) will retain the bed of that water in state ownership; and

(3) may reserve an alternative upland access route, if the department finds that access along an easement reserved under (1) of this subsection might be difficult because of topography or obstructions.

(e) Before the department grants a lease of the land estate or conveyance of land adjacent to or containing any inland water determined under 11 AAC 51.035 to be public water, the department

(1) will reserve, along and on the bed of that water, an access easement that

(A) is continuous, unless topography or land status prevents a continuous easement; and

(B) extends at least 50 feet upland from the ordinary high water mark; and

(2) may reserve an alternative upland access route, if the department finds that access along an easement reserved under (1) of this subsection might be difficult because of topography or obstructions.

(f) Before the department grants a lease of the land estate or conveyance of land adjacent to or containing water determined under 11 AAC 51.035 to be navigable or public water, and if

(1) an existing trail, road, or other overland route provides access to the water but does not already have a reserved easement, the department will reserve an access easement, with a minimum width as required under 11 AAC 51.015(d)(1)(E);

(2) a trail, road, or other overland access route to the water does not exist, but a public road or a public trail lies within two miles of the navigable or public water, and if overland access from the road or trail to the water is feasible, the department

(A) will reserve, from the road or trail to the water, an access easement with a minimum width of 50 feet, or with a minimum width of 60 feet if the department also determines that the need for increased public access to

navigable or public water may justify construction of a road along an easement; and

(B) will reserve access easements under (A) of this paragraph, at intervals of approximately one mile, from the water to a public road or a public trail that lies parallel to the water; in reserving these easements, the department may designate

(i) a section-line easement under AS 19.10.010 as an access easement, to the extent that the section-line easement runs on state land, and if the section-line easement provides a practical route to the shore; and

(ii) an access easement along a tributary waterway for access to another water body or waterway, if the easement along the tributary waterway provides a practical and reasonably direct route from the road or trail to the other water body or waterway; or

(3) a trail, road, or other overland access route to the water does not exist, but a public railroad crossing authorized by the railroad operator lies within two miles of the navigable or public water, and if overland access from the railroad crossing to the water is feasible, the department will reserve, from the railroad crossing to the water, an access easement with a minimum width of 50 feet, or with a minimum width 60 feet if the department also determines that the need for increased public access to navigable or public water may justify construction of a road along an easement.

(g) If reserving access easements under (f) of this section, the department may reserve additional access easements to a water body or waterway to accommodate existing or anticipated heavy use, to protect portage routes, or to secure access between aircraft landing sites and nearby navigable or public water.

(h) In determining the access easements to be reserved to and along navigable or public water, the department will solicit comments from the Department of Fish and Game and from a municipality or other person entitled under AS 38.05.945 to notice of the preliminary or proposed written decision under AS 38.05.035(e). (Eff. 5/3/2001, Register 158)

Authority:	AS 38.04.005	AS 38.04.900	AS 38.05.035
	AS 38.04.055	AS 38.05.020	AS 38.05.127

Editor's note: The subject matter of 11 AAC 51.045 was formerly located at 11 AAC 53.330. The history note for 11 AAC 51.045 does not reflect the history of the earlier section.

11 AAC 51 is amended by adding a new section to read:

11 AAC 51.055. IDENTIFICATION OF R.S. 2477 RIGHTS-OF-WAY. (a) Before reporting to the legislature in accordance with AS 19.30.400(b), the department will issue a proposal to identify a historic road or trail as an R.S. 2477 right-of-way that has been accepted by the state or territory of Alaska or by public user or construction.

(b) In a proposal under (a) of this section, the department will consider if sufficient evidence

(1) exists to locate the potential R.S. 2477 right-of-way on a United States Geological Survey topographical map at a scale of 1:63,360 (one inch = one mile) or on an equivalent or more detailed map;

(2) shows that the potential R.S. 2477 right-of-way crossed federal land that was unappropriated and not reserved for public use at the time of any acceptance described in (3)(A) or (3)(B) of this subsection; and

(3) exists of historical use; that evidence must include a reliable historical account, or information supplied by a knowledgeable person, to show that

(A) public use or construction constituted acceptance of the right-of-way grant under R.S. 2477 in accordance with applicable law; or

(B) a positive act on the part of a public authority constituted acceptance of the right-of-way grant under R.S. 2477 in accordance with applicable law.

(c) The department will consider any relevant evidence that

(1) supports or is contrary to evidence considered under (b) of this section; and

(2) is offered during a public comment period of at least 30 days after the department gives public notice

(A) on the Alaska Online Public Notice System developed under AS 44.62.175, or in a newspaper of statewide circulation;

(B) in a newspaper of general circulation in the vicinity of the route;

(C) by posting at a post office in the vicinity of the route, or by public service announcements in media serving the vicinity of the route;

(D) to a municipality through whose boundaries the route passes;

(E) to a regional corporation established by 43 U.S.C. 1606(a) (sec. 7(a), Alaska Native Claims Settlement Act) through whose region the route passes and

(F) to a village corporation organized under 43 U.S.C. 1607(a) (sec. 8(a), Alaska Native Claims Settlement Act) if the route is within 25 miles of the village for which the corporation was established; and

(G) to the Department of Fish and Game.

(d) After the comment period held under (c) of this section, the department will prepare a written decision whether to identify the route, in whole or in part, as an R.S. 2477 right-of-way. The department will base its decision on evidence considered or received, and will include a response to comments received. The department will give notice of its identification decision to any person who commented during the comment period.

(e) If under (d) of this section the department identifies a historic road or trail as an R.S. 2477 right-of-way, the department will show the approximate location of the right-of-way on a map described in (b) of this section.

(f) The department’s identification decision may be appealed under 11 AAC 02 if the appellant demonstrates that questions of fact remain to be resolved on a route's

qualification as an R.S. 2477 right-of-way. The possible adverse impacts that public use of a route may cause to private property are not grounds for an appeal of the department's identification of an R.S. 2477 right-of-way. However, the department will consider adverse impacts in the department's management of the right-of-way, and the property owner may raise them if petitioning under 11 AAC 51.065 to vacate or relocate the right-of-way.

(g) After reporting to the legislature under AS 19.30.400(b), the department will manage use by the general public of an R.S. 2477 right-of-way that is identified under this section unless the

(1) R.S. 2477 right-of-way is part of the state highway system or the department transfers the R.S. 2477 right-of-way to the Department of Transportation and Public Facilities for management; or

(2) the department transfers management authority to a municipality, with the municipality's consent; however, management by a municipality does not include the right to vacate the right-of-way. (Eff. 5/3/2001, Register 158)

Authority:	AS 19.30.400	AS 38.04.058	AS 38.05.020
	AS 38.04.055	AS 38.04.900	AS 38.05.035

11 AAC 51.060 is repealed:

11 AAC 51.060. EVALUATION CRITERIA FOR DEPARTMENTAL DECISION. Repealed. (Eff. 5/14/92, Register 122; am 11/10/93, Register 128; repealed 5/3/2001, Register 158)

11 AAC 51 is amended by adding a new section to read:

11 AAC 51.065. VACATION OF EASEMENTS. (a) An affected person or a municipal assembly or city council may petition the department to vacate, modify, or relocate,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) An owner of land affected by an unplatted R.S. 2477 right-of-way may request the department's approval to reroute the right-of-way elsewhere on that owner's land to an alignment that less adversely affects the landowner's interests. The department will approve the realignment if the realignment provides access reasonably comparable to the original, does not affect land in other ownership, and connects to the original route where it enters and exits the landowner's land. The realignment of an R.S. 2477 right-of-way under this subsection within a parcel of land does not constitute a vacation under this section. (Eff. 5/3/2001, Register 158)

Authority:	AS 19.30.410	AS 38.04.900	AS 38.05.127
	AS 38.04.058	AS 38.05.020	AS 40.15.070
	AS 38.04.200	AS 38.05.035	AS 40.15.305

11 AAC 51.070 is repealed:

11 AAC 51.070. APPEAL. Repealed. (Eff. 5/14/92, Register 122; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 51.070 was relocated to 11 AAC 51.910.

11 AAC 51 is amended by adding a new section to read:

11 AAC 51.075. SURVEYING AND FIELD MARKING OF EASEMENTS. (a) The department may require as a condition of any sale, lease, grant, or other disposal of state land that the purchaser, lessee, or grantee survey, mark, or both survey and mark access easements reserved or retained under this chapter in a manner consistent with the following requirements:

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

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

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

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

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

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

(c) A person may not obstruct, move, or destroy a marking on an access easement without written permission from the department. (Eff. 5/3/2001, Register 158)

Authority:	AS 38.04.005	AS 38.04.900	AS 38.05.035
	AS 38.04.050	AS 38.05.020	AS 38.05.127
	AS 38.04.055		

Editor's note: The subject matter of 11 AAC 51.075 was formerly located at 11 AAC 53.350. The history note for 11 AAC 51.075 does not reflect the history of the earlier section.

11 AAC 51.080 is repealed:

11 AAC 51.080. FINAL DECISION AND JUDICIAL APPEAL. Repealed. (Eff. 5/14/92, Register 122; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 51.080 was relocated to 11 AAC 51.910.

11 AAC 51 is amended by adding a new section to read:

11 AAC 51.085. ACCESS AND UTILITY EASEMENTS TO MENTAL HEALTH TRUST LAND. Before disposing of land, or granting or reserving an easement across land, the department will, after consulting with the executive director of the mental health trust land unit established under AS 44.37.050, either reserve or ensure the department's future ability to reserve adequate and feasible access and utility easements to any adjoining or adjacent Alaska mental health trust land without cost to the Alaska mental health trust. (Eff. 5/3/2001, Register 158)

Authority:	AS 37.14.009	AS 38.05.020	AS 38.05.801

Editor's note: The subject matter of 11 AAC 51.085 was formerly located at 11 AAC 53.305. The history note for 11 AAC 51.085 does not reflect the history of the earlier section.

11 AAC 51.090 is repealed:

11 AAC 51.090. CLASSIFICATION. Repealed. (Eff. 5/14/92, Register 122; repealed 5/3/2001, Register 158)

11 AAC 51.100 is amended by adding new subsections to read:

11 AAC 51.100. MANAGEMENT OF <u>PUBLIC EASEMENTS, INCLUDING R.S.</u> [RS] 2477 RIGHTS-OF-WAY.

. . . .

(e) If an access use or access development activity on a public easement managed under AS 38 may not occur without a permit under 11 AAC 96.010 or other authorization by the department, and if the permit or authorization sought is for new access construction

(1) that would displace or preclude a traditional means of access for a traditional outdoor activity on the easement, including construction of a road on a trail traditionally used for hiking or snowmachine travel, the department will provide public notice and an opportunity for comment of at least 14 days before deciding whether to issue the permit or authorization; or

(2) on an unsurveyed easement that crosses land not managed under AS 38, the department will provide notice and a comment opportunity of at least 14 days to the owner of the land determined to be subject to the easement before deciding whether to issue the permit or authorization.

(f) Even of notice is not required under (e)(1) or (e)(2) of this section, the department may provide notice and a comment opportunity to the owner of the land subject to an R.S. 2477 right-of-way.

(g) If a permit or authorization is sought for new access construction as described in (e)(2) of this section, the department will require the permit applicant to survey the public easement, in order to show the relationship between property boundaries and that easement and to reduce the possibility of unintentional trespass. However, the department will not require a survey if the location of the public easement may readily be determined, and if a dispute does not exist regarding whose land the easement crosses. The survey is subject to approval by the department. The survey must be conducted by a surveyor, must show the relationship of the easement to the boundaries of the land it crosses, and must be performed to Class III standards under 11 AAC 53.110.

(h) The department or a person may complete a trail easement diagram showing the location of an existing trail or road. An applicant who is subject to (g) of this section may not use a trail easement diagram as a survey unless the trail easement diagram satisfies the requirements for a survey set out in that subsection.

(i) On land subject to a public easement managed under AS 38, uses and activities by the landowner that are consistent with the landowner's property rights and that do not restrict public use of the easement do not require a permit under 11 AAC 96.

(j) If the state holds only a public easement, and another person holds the other interests in the land, the department will issue a permit under 11 AAC 96 only for uses and activities related to access. (Eff. 5/14/92, Register 122; am 11/10/93, Rgister 128; am 5/3/2001, Register 158)

Authority:	**AS 38.04.045**	AS 38.04.900	AS 38.05.027
	AS 38.04.058	AS 38.05.020	AS 38.05.035

ARTICLE 3. (RESERVED).

ARTICLE 4. GENERAL PROVISIONS.

Section
900. (Repealed)
910. Appeal
990. Definitions

11 AAC 51.900 is repealed:

11 AAC 51.900. DEFINITIONS. Repealed. (Eff. 5/14/92, Register 122; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 51.900 was relocated to 11 AAC 51.990.

11 AAC 51 is amended by adding new sections to read:

11 AAC 51.910. APPEAL. (a) In accordance with 11 AAC 02, an eligible person may appeal a decision issued under this chapter, including

(1) an R.S. 2477 right-of-way identification decision under 11 AAC 51.055(d) or a decision following notice under 11 AAC 51.100(f), if the appellant demonstrates that there are questions of fact to be resolved on the route's qualification as an R.S. 2477 right-of-way;

(2) a permit decision following notice under 11 AAC 51.100(e)(1) or (e)(2), on the basis that new construction or use of an easement will adversely affect the appellant’s access or use, or that the easement’s surveyed location is incorrect.

(b) The commissioner’s decision on an appeal under 11 AAC 02 is the final administrative order and decision of the department for purposes of appeal to superior court. (Eff. 5/3/2001, Register 158)

Authority:	AS 38.04.900	AS 38.05.035	AS 44.37.011
	AS 38.05.020		

Editor's note: The subject matter of 11 AAC 51.910 was formerly located at 11 AAC 51.070 and 11 AAC 51.080. The history note for 11 AAC 51.910 does not reflect the history of the earlier sections.

11 AAC 51.990. DEFINITIONS. As used in this chapter, unless the context requires otherwise,

(1) "access easement" means a public easement that is identified to allow access by the public, including access to private property by the owners of that private property and their invitees, and that may be used for any mode of transportation commonly employed for access purposes, subject to any restrictions noted on the plat, deed, recorded reservation, or other legally applicable document;

(2) "arterial road" means a road that is used primarily for traffic through and beyond the area, rather than for access to adjacent land;

(3) "commissioner" means the commissioner of natural resources;

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

(5) “land estate” means any interest in land other than an interest reserved under AS 38.05.125;

(6) “mean high water line” means the tidal datum plane of the average of all the high tides, as would be established by the National Geodetic Survey, at any place subject to tidal influence;

(7) "navigable water" has the meaning given in AS 38.05.965;

(8) "neighborhood service road" means a road that is primarily for traffic within a residential area;

(9) "ordinary high water mark" means the mark along the bank or shore up to which the presence and action of the non-tidal water are so common and usual, and so long continued in all ordinary years, as to leave a natural line impressed on the bank or shore and indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics;

(10) "pedestrian easement" means an access easement that is identified for travel

(A) on foot;

(B) by a hand- or foot-propelled vehicle, including a wheelchair or bicycle; or

(C) by dogsled;

(11) "platting authority" means the applicable platting authority identified in AS 40.15.070;

(12) "public water" has the meaning given in AS 38.05.965;

(13) "R.S. 2477" means former 43 U.S.C. 932 (Act of July 26, 1866, 14 Stat. 251);

(14) "state highway system" or "Alaska highway system" means all roads constructed, managed, operated, or maintained by the Department of Transportation and Public Facilities;

(15) "state land" has the meaning given in AS 38.05.965; "state land"

(A) includes an interest in land that is owned by the state and managed under AS 38; and

(B) does not include Alaska mental health trust land as defined in 11 AAC 99.990 and managed under AS 37.14.009 and AS 38.05.801;

(16) "survey easement" means a public easement that the department identifies for access to a survey control station set by the United States, the department, or a private surveyor;

(17) "surveyor" means a professional land surveyor who is registered under AS 08.48 (Architects, Engineers, and Land Surveyors Registration Act);

(18) "utility easement" means a public easement that is identified for use by utility services, and not for public access unless the

(A) landowner gives permission for public access; or

(B) easement is also identified as an access easement;

(19) "vacate" means to relinquish, release, or extinguish a right or interest in property;

(20) "water body" means a natural, well-defined body of water;

(21) "waterway" means a natural, well-defined channel of water produced wholly or in part by a definite flow of water, whether continuous or intermittent. (Eff. 5/3/2001, Register 158)

Authority: AS 38.04.900 AS 38.05.035 AS 38.05.127
AS 38.05.020

Editor's note: The subject matter of 11 AAC 51.990 was formerly located at 11 AAC 51.900. The history note for 11 AAC 51.990 does not reflect the history of the earlier section.

CHAPTER 53. RECORDS, SURVEYS, AND PLATTING.
ARTICLE 3. EASEMENTS AND RIGHTS-OF-WAY.

Section

300. **(Repealed)** [EASEMENTS AND RIGHTS-OF-WAY]
305. **(Repealed)** [ACCESS AND UTILITY EASEMENTS TO MENTAL HEALTH TRUST LAND]
310. **(Repealed)** [DETERMINATION OF NAVIGABLE AND PUBLIC WATER]
320. **(Repealed)** [WRITTEN DECISION CONCERNING EASEMENTS]
330. **(Repealed)** [EASEMENTS TO AND ALONG NAVIGABLE AND PUBLIC WATER]
340. **(Repealed)** [DIRECTORY OF EASEMENTS]
350. **(Repealed)** [SURVEYING AND FIELD MARKING OF EASEMENTS]
360. **(Repealed)** [LIABILITY FOR INJURY OR ACCIDENT]
370. **(Repealed)** [LIABILITY FOR DAMAGES]

11 AAC 53.300 - 11 AAC 53.370 are repealed:

11 AAC 53.300. EASEMENTS AND RIGHTS-OF-WAY. Repealed. (Eff. 3/27/80, Register 73; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 53.300 was relocated to 11 AAC 51.015.

11 AAC 53.305. ACCESS AND UTILITY EASEMENTS TO MENTAL HEALTH TRUST LAND. Repealed. (Eff. 3/31/97, Register 141; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 53.305 was relocated to 11 AAC 51.085.

11 AAC 53.310. DETERMINATION OF NAVIGABLE AND PUBLIC WATER. Repealed. (Eff. 12/29/77, Register 64; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 53.310 was relocated to 11 AAC 51.035.

11 AAC 53.320. WRITTEN DECISION CONCERNING EASEMENTS. Repealed. (Eff. 12/29/77, Register 64; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 53.320 was relocated to 11 AAC 51.035.

11 AAC 53.330. EASEMENTS TO AND ALONG NAVIGABLE AND PUBLIC WATER. Repealed. (Eff. 12/29/77, Register 64; am 3/27/80, Register 73; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 53.330 was relocated to 11 AAC 51.045.

11 AAC 53.340. DIRECTORY OF EASEMENTS. Repealed. (Eff. 12/29/77, Register 64; am 3/27/80, Register 73; repealed 5/3/2001, Register 158)

11 AAC 53.350. SURVEYING AND FIELD MARKING OF EASEMENTS. Repealed. (Eff. 12/29/77, Register 64; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 53.350 was relocated to 11 AAC 51.075.

11 AAC 53.360. LIABILITY FOR INJURY OR ACCIDENT. Repealed. (Eff. 12/29/77, Register 64; repealed 5/3/2001, Register 158)

11 AAC 53.370. LIABILITY FOR DAMAGES. Repealed. (Eff. 12/29/77, Register 64; repealed 5/3/2001, Register 158)