

# RS 2477 RIGHTS-OF-WAY POLICY AND PROCEDURES

## Introduction

**THE RIGHT OF WAY FOR THE CONSTRUCTION OF HIGHWAYS OVER PUBLIC LANDS, NOT RESERVED FOR PUBLIC USES, IS HEREBY GRANTED.**

This deceptively simple phrase became law in 1866, ten months before Alaska was purchased from Russia. Interpretations of the congressional intent of this law have varied over the past 120 years. Land ownership or management changes created under the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act have further complicated the interpretation and implementation of the law in Alaska.

Although RS 2477 refers to rights-of-way without limitation as to purpose, the statute of which it was a part addressed only mining and homesteading claims. It was the first comprehensive mining law for land owned by the United States. Before 1866 miners had entered, settled on, and used public domain land without benefit of federal statutory protection. Thus, RS 2477 insured that miners, and homesteaders, would have access rights across otherwise unreserved public lands to reach their claims and improvements.

RS 2477 was only one of many authorities which provided for access across Federal lands. But, the RS 2477 grant was unique among these access authorities. It was a congressional grant which did not require any action on the part of a Federal agency. While the grant was "offered" by Congress, a right could not come into existence until there was an "acceptance" of the offer and thereby a contract was completed. Courts have ruled that the scope of the offer is defined by Federal law while the acceptance was by a State, instrumentality of the State, or public user.

### I. Policy

The State of Alaska in order to fulfill its "public trust" responsibilities, recognizes a need to develop and implement a coordinated statewide policy that better defines state goals and responsibilities to the identification and validation of previously established rights-of-way for historical roads and trails in Alaska under federal Revised Statute (RS) 2477.

Therefore, it is the policy of the state, as implemented by the procedures contained herein, to 1) assist in the clarification, promotion and retention of public access opportunities; 2) provide guidance to the general public and those public officials responsible for land resource and transportation management and land use planning decisions; 3) ensure adequate public and agency participation in the state decision making process; and, 4) respect private property rights by helping to resolve uncertainty over possible valid existing RS 2477 rights-of-way (ROW's) on public and private lands.

## II. Procedures

The State of Alaska, acting through the Department of Natural Resources (DNR), will use the following procedures to guide future assertions by the state of RS 2477 ROW's. The DNR shall require sufficient information or evidence to fully document a claim. The procedure involves preliminary review, comment, and final decision. These procedures shall also provide a process whereby private citizens or other parties may assert a claim of a ROW's under RS 2477. A decision by DNR to undertake a RS 2477 claim review is contingent upon the availability of sufficient funds and resources.

The RS 2477 ROW assertion process is generally depicted on the flow chart attached as Figure 1.

These procedures provide the public with a single point of contact at DNR in order to petition the state to assert, disclaim, or vacate its interest in a particular ROW. DNR will be responsible for coordinating the state's response with the Department of Transportation and Public Facilities (DOT&PF). Filing and processing fees may be charged to help offset the costs of reviewing the petition. All requests of the state by the public will be processed in accordance with the procedures contained in this section, subject to the availability of funding and resources.

After receiving a petition from the public, the DNR shall immediately establish a case file for the claim. This case file shall subsequently become the administrative record used by the state as the basis for any future decisions. The DNR shall then proceed to gather all available information concerning the location of the claim RS 2477 ROW and prepare a written preliminary validity determination which shall address the below referenced criteria.

1. Identification of the land involved and the periods of time when it was "unreserved public land". In addition, identification of any positive acts on the part of the appropriate public authorities clearly manifesting an intention to accept the grant, or evidence of public use for such time and conditions to prove that the grant was accepted.
2. Identification of sufficient evidence to support a finding that the route qualifies as a valid RS 2477 ROW, such as the purpose, location at time of acceptance, type and frequency of public use, public records or money expended, on-the-ground verification and historical documentation (i.e., maps, newspaper/periodical references, Alaska Road Commission reports and archival records, Alaska Territorial Highway Engineer Reports and archival records, U.S. Bureau of Public Roads reports and archival records and documents of local, state and federal agencies in Alaska).

3. Identification of the public benefits of the potential RS 2477 ROW, including but not limited to preservation of transportation system options, enhanced public use access for economic or recreational purposes, cost savings through avoidance of condemnation, negotiated purchase, avoidance of land exchanges or other more costly acquisition method.
4. If the route will adversely affect the land management practices of the underlying and/or adjacent landowner, and if so, what mitigating management measures could be implemented to alleviate or eliminate any adverse impacts.
5. In consultation with DOT&PF, decide whether to classify the route as an off system road, designated state road or federal-aid highway.

The preliminary determination shall be referenced in a public notice, consistent with the requirements of AS 38.05.945. DNR shall also compile and maintain a mailing list of interested parties which will receive notice of all RS 2477 ROW actions. A written comment period of at least 30 days shall be included in the process. Following completion of the public notice and written comment period, DNR shall issue a final determination which shall be subject to administrative appeal. Affected parties including landowner(s) will be notified of the final determination. DNR will adopt regulations to implement these procedures.

If there is no administrative appeal of a final determination that a valid RS 2477 ROW exists, or if an administrative appeal upholds the final determination, the route shall be identified as a validated RS 2477 ROW and be noted on state land records. The notation shall distinguish between asserted or claimed ROW's and validated ROW's. It is the position of the state that federal agencies should also note valid RS 2477 ROW's on applicable federal land records.

The final decision after the administrative process is an official state position regarding the validity of the RS 2477 ROW claim and constitutes a determination by the state that there is either not sufficient evidence to support a RS 2477 ROW claim or that it is not in the public interest to do so or that there is sufficient evidence in the case file to support an affirmative action on the claim by a court, and that the assertion is in the best interest of the state.

Once a decision is made to formally assert that a given RS 2477 ROW is valid, DNR or DOT&PF may also take steps to resolve any conflicts that may exist with adjacent land owners.

A final decision by the state that a valid claim exists is also a determination that the state will defend the assertion from adverse claims, if necessary, in court and may proceed to initiate quiet title action or seek declaratory judgement from the court. In some cases, agreements may also be reached

with affected landowners to address unresolved questions (such as width or management of the ROW).

### III. Management

Under Alaska Statutes, DOT&PF has management authority for RS 2477 ROW's on non-state land if such RS 2477 ROW's are recognized and accepted by the state and held to be valid by the courts. Where such recognized, accepted and valid ROW's occur on state land, DOT&PF and the state agency having management authority over the state land, usually DNR, have concurrent management authority over the ROW.

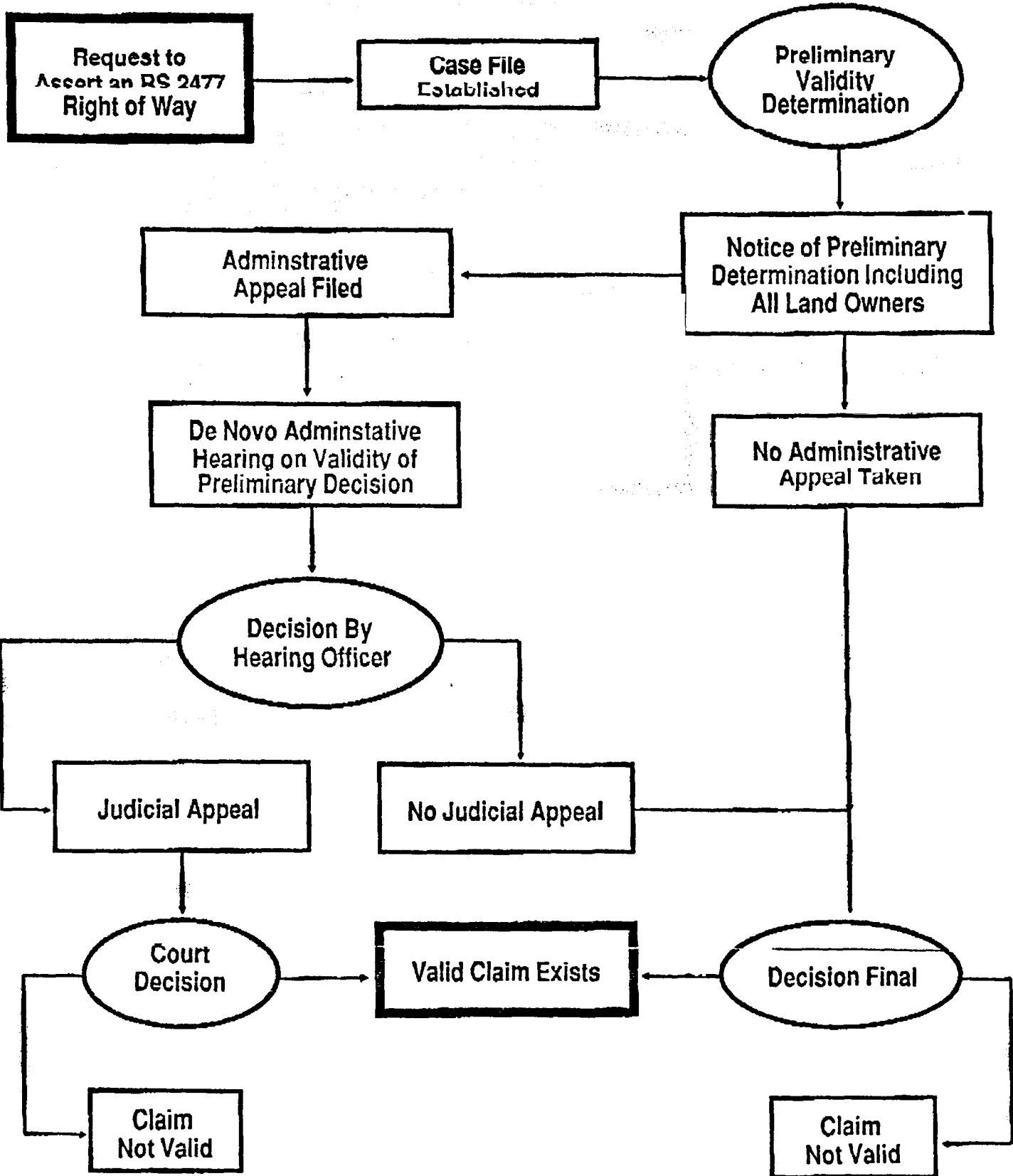
In cases where another state agency (other than DNR or DOT&PF) has management authority over the ROW, efforts may be made by DNR and/or DOT&PF to assume management responsibility.

DOT&PF agrees to accept management authority for all RS 2477 ROW's asserted by the state and held to be valid, which are off system roads, designated state roads or federal-aid highway system roads. If a valid RS 2477 ROW is subsequently categorized as an off system road, state designated road or federal-aid highway system road, management responsibility will be transferred from DNR to DOT&PF, consistent with this section. For all other RS 2477 ROW interests on state land that have been held to be valid, DOT&PF agrees to transfer management responsibility to DNR.

The state may enter into cooperative agreements with adjacent land owners or with other parties for protection and management of rights-of-way. Unless otherwise included in the final decision, an assertion decision by the state does not constitute formal acceptance of maintenance responsibility by the state or assumption of liability for the ROW.

DOT&PF and DNR will adopt regulations to provide for state management of RS 2477 ROW's.

# RS 2477



**M. Clyde Stoltzfus, Chief**  
**State of Alaska Department of Transportation and Public Facilities**  
**Office of Strategic Management, Planning and Policy**

**This page provided for your convenience in taking notes**

**NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF  
THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES**

---

Notice is given that the Department of Transportation and Public Facilities, under the authority of AS 19.05.020 and AS 10.10.020, proposes to adopt a regulations in Title 17 of the Alaska Administrative Code, dealing with the classification of off-system low volume access routes, to implement AS 44.42.020 as follows:

- 17 AAC .05 is amended by adding new provisions as follows:

The proposed regulation would provide guidelines for the department's use in classifying low volume off-system routes as pioneer roads, basic access roads, community roads or trails. The guidelines would consist of standard characteristics and functions for each classification. The regulations would also set out suggested non-mandatory maintenance levels for each classification. The intent of the proposed regulations are to provide guidelines for identifying low volume off-system routes, based on their characteristics and functions. The effect of the regulations will be to classify access routes according to their specific uses.

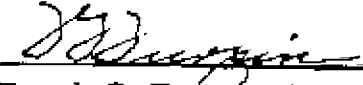
Notice is also given that any person interested may present written statements or arguments relevant to the proposed action by writing to The Department of Transportation and Public Facilities, P.O. Box Z, Juneau, Alaska, 99811, Attention: Commissioner's Office, so that they are received no later than July 5, 1991.

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained by writing to: The Department of Transportation and Public Facilities, P.O. Box Z, Juneau, Alaska, 99811, Attention: Commissioner's Office.

The Department of Transportation and Public Facilities, after the deadline stated above, will either adopt these or other proposals dealing with the same subject, without further notice, or decide to take no action on them.

DATE: May 28, 1991

  
\_\_\_\_\_  
Frank G. Turpin, Commissioner

# DRAFT

Register

1991

TRANSPORTATION

17 AAC 05 is amended to read by adding the following new sections:

17 AAC 05.030. OFF-SYSTEM ROADS. In order to provide access that is appropriate for specific uses and local conditions, the department may classify roads that are not part of the Alaska Highway System as follows:

(1) Trails:

A trail is any foot path or way open to public use as a matter of right that is not listed on the Alaska Highway System referred to in 17 AAC 05.010 and that

(i) is eight feet wide or less, and

(ii) is not graded or surfaced, and

iii whose drainage improvements, if any, do not meet minimum department standards for secondary roads.

A trail may be any path or way that meets the criteria of (1)(A) above and that is open to public use.

(2) Basic Access Roads:

A basic access road is any road open to public use as a matter of right that is not listed on the Alaska Highway System referred to in 17 AAC 05.010 and that

(i) has portions of its route graded and surfaced, and

(ii) is at least eight feet wide, and,



# DRAFT

Register

1991

TRANSPORTATION

(iii) has drainage improvements that do not meet minimum department standards for secondary roads, and

(iv) has structural improvements that permit the fording of streams; and

(v) has no signs indicating road junctions or other road related information

(B) A basic access road may be any road that meets the criteria of (2)(A) and that provides access

(i) to an from a cabin, homestead, or lodge,  
or

(ii) to and from a mineral resource extraction site.

(3) Pioneer Roads:

(A) A pioneer road is any road open to public use as a matter of right that is not listed on the Alaska Highway System referred to in 17 AAC 05.010 and that

i is at least eight feet wide, and

ii has portions of its route graded and surfaced, and

(iii) has drainage improvements that do not meet minimum department standards for secondary roads, and

**DRAFT**

Register , 1991 TRANSPORTATION

(iv) has structural improvements that permit the crossing of natural features such as streams, gullies and wet areas, and

(v) has signs indicating road junctions and other road-related information.

(B) A pioneer road may be any road that meets the requirements of (3)(A) and that provides access

(i) from a town, village or community to a local site used by the residents of the town, village or community, or

(ii) from a mineral resource extraction site to a mineral resource transportation facility.

(4) Community Roads: - - -

(A) A community road is any road open to public use as a matter of right that is not listed on the road system referred to in 17 AAC 05.010 and that

(i) meets the minimum department standards for secondary roads.

(B) A community road may be any road that meets the requirements of (4)(A) and that provides access

(i) from a town, village or community to a local site used by the residents of the town, village or community, or

# DRAFT

Register

1991

TRANSPORTATION

(ii from a mineral resource extraction site  
to a mineral resource transportation facility.

\_\_\_/\_\_\_/\_\_\_, Register .)

Authority: AS 19.05.020

AS 19.10.020

17 AAC 05.040. MAINTENANCE OF OFF-SYSTEM ROADS. (a) The Alaska Department of Transportation and Public Facilities may not maintain an off-system road except as provided for under 17 AAC 20.040.

(b) A municipality that maintains an off-system road may be eligible for state aid under AS 29.60.110

(c) Individuals or groups of individuals may maintain off-system roads. The following maintenance levels are offered only as suggested guidelines in such cases:

(1 Trails:

If an individual or group of individuals decides to maintain a trail, the trail should be maintained in such a manner so that it is possible to travel on the established pathway of the trail.

(2) Basic Access Roads:

(A) If an individual or group of individuals decides to maintain a basic access road, the road should

# DRAFT

Register

1991

TRANSPORTATION

be maintained in such a manner so that it is possible to travel the road with an off-road vehicle without serious difficulty.

## Pioneer Roads:

(A) If an individual or group of individuals decides to maintain a pioneer road, the road should be maintained in such a manner so that it is possible to easily travel the road with an off-road vehicle.

## Community Roads:

(A) If an individual or group of individuals decides to maintain a community road, the road should be maintained in such a manner so that it is possible to easily travel the road with a conventional passenger vehicle. (Eff. /./ , Register .)

Authority: AS 19.05.020

AS 19.10.020

# DRAFT

Register

1991

TRANSPORTATION

17 AAC 05.030. DEFINITIONS. In this chapter

(1) "Conventional passenger vehicle" means a self-propelled vehicle used primarily for the transportation of persons on public roads but not used for the transportation of persons for hire or other commercial uses

(2) "Graded or surfaced" means the placement of earthen materials on the path or roadway in such a way that enhances the passage of vehicles.

(3) "Mineral resource extraction site" means a location at which heavy equipment is used to remove mineral resources from the surface or subsurface.

(4) "Mineral resource transportation facility" means a location where raw mineral resources are transferred between different modes of transportation.

(5) "Minimum department standards for secondary roads" means those standards set out in the Alaska Department of Transportation and Public Facilities' Highway Preconstruction Manual, Part II including those standards set out in ch. 11, section 11-03.06, Drainage

(6) "Off-road vehicle" means a self-propelled all terrain vehicle designed primarily for off road use

(7) "Wet areas" means land that has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support a

# DRAFT

Register

1991

TRANSPORTATION

prevalence of hydrophytic vegetation adopted for life in saturated conditions. (Eff.       , Register

Authority: AS 19.05.020

AS 19.10.020

P.27  
5/8/9

Register 1991 TRANSPORTATION

DRAFT

17 AAC 05 is amended to read by adding the following new sections:

17 AAC 05.030. OFF-SYSTEM ROADS. In order to provide access that is appropriate for specific uses and local conditions, the department may classify roads that are not part of the Alaska Highway System as follows:

(1) Trails:

(A) A trail is any path or way open to public use that is not listed on the Alaska Highway System referred to in 17 AAC 05.010 and that

(i) is of a width that permits only a single lane of travel or less,

(ii) is not graded or surfaced,

(iii) whose drainage improvements, if any, do not meet minimum department standards for low volume roads.

(B) A trail may be any path or way between two points that is open to public use.

(2) Basic Access Roads:

(A) A basic access road is any road open to public use that is not listed on the

(Underlined needs definition)

Register , 1991

TRANSPORTATION

DRAFT

Alaska Highway System referred to in 17 AAC  
05.010 and that

(i) has portions of  
its route graded and surfaced, and

(ii) is of a width  
that permits a single lane of  
travel,

(iii) has drainage  
improvements that do not meet  
minimum department standards for low  
volume roads,

(iv) has structural  
improvements that permit the fording  
of streams; and

(v) has no signs  
indicating road junctions or other  
road related information.

(B) A basic access road may be any  
road that meets the criteria of (2)(A) and  
that provides access

(i) to an from a  
cabin, homestead, or lodge, or

(ii) to and from a  
mineral resource extraction site.



Register

1991

TRANSPORTATION

DRAFT

(3) Pioneer Roads:

(A) A pioneer road is any road open to public use that is not listed on the Alaska Highway System referred to in 17 AAC 05.010 and that

(i) is of a width that permits a single lane of travel, and

(ii) has portions of its route graded and surfaced, and

(iii) has drainage improvements that do not meet minimum department standards for low volume roads, and

(iv) has structural improvements that permit the crossing of natural features such as streams, gullies and wet areas, and

(v) has signs indicating road junctions and other road-related information.

(B) A pioneer road may be any road that meets the requirements of (3)(A) and that provides access

DRW

Register , 1991 TRANSPORTATION

(i) from a town, village or community to a local site used by the residents of the town, village or community, or

(ii) from a mineral resource extraction site to a mineral resource transportation facility.

(4) Local System Roads:

(A) A local system road is a road that is not listed on the road system referred to in 17 AAC 05.010 and that

(i) meets the minimum department standards for low volume roads, and

(ii) is eligible for federal funding under \_\_\_\_\_

(B) A local system road may be any road that meets the requirements of (4) (A) and that provides access

from a town, village or community to a local site used by the residents of the town, village or community, or

Register , 1991 TRANSPORTATION

(ii) from a mineral resource extraction site to a mineral resource transportation facility.

DRAFT

17 AAC 05.040. MAINTENANCE OF OFF-SYSTEM ROADS. The following maintenance levels for off-system roads are offered only as suggested guidelines for local road service districts:

(1) Trails:

(A) If a local road service district decides to maintain a trail, the trail should be maintained in such a manner so that it is possible to travel on the established pathway of the trail.

(2) Basic Access Roads:

(A) If a local road service district decides to maintain a basic access road, the road should be maintained in such a manner so that it is possible to travel the road with an off-road vehicle without serious difficulty.

(3) Pioneer Roads:

(A) If a local road service district decides to maintain a pioneer road,

Register , 1991 TRANSPORTATION

DRAFT

the road should be maintained in such a manner so that it is possible to easily travel the road with an off-road vehicle.

(4) Local System Roads:

(A) If a local road service district decides to maintain a local system road, the road should be maintained in such a manner so that it is possible to easily travel the road with a conventional passenger vehicle. (Eff. \_\_\_/\_\_\_/\_\_\_, Register

Authority: AS 19.05.020

AS 19.10.020

Ross Kopperud, Assistant Attorney General  
State of Alaska Department of Law

This page provided for your convenience in taking notes

---