

# 11 Alaska Admin. Code § 05.070

## Section 11 AAC 05.070 - Easements and rights-of-way

(a) Fees established under this section are for authorizations, petitions and services under AS 38 and AS 19 for easements and rights-of- way. The director of the division of mining, land and water may, by written order, reduce or revise one or more of the fees established in (d)(1) or (d)(2) of this section by waiving a portion of the fee. Under this section, an order waiving a portion of a fee

(1) must apply to all applicants or petitioners for that authorization, petition, or service;

(2) may not exceed 20 percent of the amount established in (d)(1) or (d)(2) of this section for an authorization, petition, or service;

(3) must be published on the division's public internet webpage and the Alaska Online Public Notice System 30 days before the effective date of the waiver;

(4) may not waive or reduce any additional fees imposed under (c) of this section; and

(5) is not subject to appeal under AS 44.37.011 or 11 AAC 02.

(b) The director shall consider in waiving a portion of a fee under (a) of this section

(1) the estimated actual costs of the authorization, petition, or service to the department;

(2) the economic needs of the department; and

(3) the public interest.

(c) When the department determines that an authorization, petition, or other service will require additional costs, or staff time in excess of the maximum hours set out in (d)(1) of this section, but that a higher fee under 11 AAC 05.270 is not required, then,

(1) the department may, in addition to the fee established in ( d)(1) of this section,

(A) charge an additional hourly fee under (d)(3) of this section for staff time in excess of the maximum hours set out in (d)(1) of this section to pay for the estimated actual staff cost for provision of the services requested; and

(B) charge fees necessary to pay for additional estimated actual costs, including costs under 11 AAC 05.200 for recordation by the department;

(2) the department will provide the applicant or petitioner written estimates detailing the additional costs for the department to continue processing the application; and

(3) the department may require payment of the appropriate additional fee amount before the department undertakes additional processing.

(d) The fees for authorizations, petitions and services under AS 38.05 and AS 19.30.410 regarding easements and rights-of-way are as follows:

(1) for an application for surface use authorization, petition or other service related to easements and rights-of-way, for

(A) a public or private easement or right-of-way other than in (F), (G), (H), (I), (J) or (K) of this paragraph,

(i) for a total of no more than one acre in area, \$600;

- (ii) for a total greater than one acre in area, \$1,500 for up to 60 hours of staff time;
- (B) an amendment of a public or private easement or right-of-way, for
  - (i) an amendment to right-of-way or easement or development plan that authorizes the use of additional state land or resources, the amount established under (A) of this paragraph;
  - (ii) an amendment to easement, right-of-way or development plan that does not authorize the use of additional state land or resources, \$300;
- (C) a public or private easement or right-of-way for unauthorized uses, \$500, in addition to fees in (A) or (B) of this paragraph;
- (D) an assignment of a public or private easement or right-of-way, \$500 for up to 20 hours of staff time;
- (E) an application to develop improvements within an existing public or private easement or right-of-way, \$250 for up to 10 hours of staff time;
- (F) a public or private easement or right-of-way for erosion control purposes for a total of no more than one acre in area, \$1,500 for up to 60 hours of staff time;
- (G) a public or private easement or right-of-way for erosion control purposes for a total greater than one acre in area, or a public easement or right-of-way for erosion control purposes by a state or federal agency or municipality, \$5,000 for up to 200 hours of staff time;
- (H) a petition to vacate or modify an easement or right-of-way, including an R.S. 2477, \$2,500 for up to 100 hours of staff time;
- (I) relocating an R.S. 2477 under 11 AAC 51.065(k), \$2,000 for up to 80 hours of staff time;
- (J) closing or restricting an existing public easement or right-of-way, including an R.S. 2477 right-of-way,
  - (i) for a closure or restriction of a public access easement or right-of-way for six months or less, \$500 for up to 20 hours of staff time;
  - (ii) for a closure or restriction of a public access easement or right-of-way more than six months, \$2,500 for up to 100 hours of staff time;
- (K) a pipeline right-of-way, for
  - (i) a proposed pipeline of less than 50 miles, \$2,000 for up to 80 hours of staff time; or
  - (ii) a proposed pipeline of 50 miles or more, \$5,000 for up to 200 hours of staff time;
- (2) for surface land use related to easements and rights-of-way, for
  - (A) a private easement or right-of-way for
    - (i) a non-exclusive use \$600 annually, plus \$300 annually for each acre above two;
    - (ii) an exclusive use, the yearly fair market rental value of the land, as determined by an appraisal at the applicant's expense, and subject to adjustment at five-year intervals based on the changes in the Consumer Price Index for all urban consumers, Anchorage Metropolitan Area (semi-annual Average) compiled by the Bureau of Labor Statistics, United States Department of Labor, as revised, rebased, or replaced by the bureau, but no less than the fee prescribed in (i) of this subparagraph;

- (B)** a public easement or right-of-way other than for (C) or (G) of this paragraph, a one-time fee of \$150 each acre unless otherwise provided in a reciprocal right-of-way agreement;
- (C)** a public easement or right-of-way for a utility, a one-time fee of 70 cents each linear foot;
- (D)** a closure or restriction of a public access easement or right-of-way for six months or less, \$125 monthly each mile;
- (E)** a closure or restriction of a public access easement or right-of-way more than six months, \$750 annually each mile;
- (F)** a private easement or right-of-way for erosion control purposes
  - (i)** for a non-exclusive non-commercial use for a total of no more than one acre in area, a one-time fee of \$2,000;
  - (ii)** for a non-exclusive non-commercial use for a total greater than one acre in area for non-linear authorizations, \$600 annually;
  - (iii)** for a non-exclusive commercial use for total of no more than one acre in area, \$600 annually;
  - (iv)** for a non-exclusive commercial use for a total greater than one acre in area, \$600 annually, plus \$300 annually for each acre above two;
- (G)** a public easement or right-of-way for erosion control purposes by a state or federal agency or municipality, a one-time fee of \$5,000;
- (H)** a public easement or right-of-way for erosion control purposes by other than by a state or federal agency or municipality,
  - (i)** for no more than one acre, a one-time fee of \$2,000;
  - (ii)** for more than one acre, a one-time fee of \$5,000;
- (I)** an entry authorization for an approved easement or right-of-way for site development for authorizations addressed in (d)(2)(A) through (d)(2)(C), (d)(2)(F)(ii) through (v), and (d)(2)(G) through (d)(2)(H) of this section, \$300 annually, plus \$150 annually for each acre above two;
- (3)** for each additional hour in excess of the maximum hours listed in (1) of this subsection, \$50.

**(e)** In addition to the fee provided for under (d)(1) of this section, for a private or public easement or right-of-way issued to authorize an unauthorized use, a director's order establishing fees may require the applicant to pay the fee prescribed under (d)(2)(A) - (G) of this section for each year the applicant occupied the installation on state land prior to the approval of the easement or right-of-way; this provision may be waived if the department determines the improvements are in the public interest or if the improvements predate the applicant's ownership.

*11 AAC 05.070*

7/1/2018, Register 227, October 2018

*AS 37.10.050*

*AS 37.10.058*

*AS 38.04.058*

*AS 38.04.200*

*AS 38.05.020*

*AS 38.05.035*

*AS 38.05.565*

*AS 38.05.810*

*AS 38.05.850*

*AS 38.35.020*

*AS 38.35.050*

*AS 38.35.140*

*AS 44.37.020*

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