

**Concurrence on Applicability of Section Line Easements on
Alaska Mental Health Trust Land
12/30/2020**

The Alaska Department of Natural Resources (“DNR”) and the Alaska Mental Health Trust Authority (“AMHTA”), through the Division of Mining, Land and Water (“DMLW”) and the Mental Health Trust Land Office (“TLO”), respectively, and the Alaska Department of Transportation and Public Facilities (DOT&PF), have agreed on the existence and applicability of statutory section line easements under AS 19.10.010 and its predecessors, and related plat issues, as set forth below. While this agreement may not address every possible scenario, and may require some parcel by parcel analysis under particular facts, the parties believe that it covers the majority of situations.

1. A statutory section line easement exists on trust land that was unreserved, surveyed, federal land prior to the time of its selection under the Alaska Mental Health Enabling Act of 1956 (“AMHEA”).¹ Such a section line easement is referred to herein as a “federal” section line easement. If the land was selected under the AMHEA prior to April 7, 1963, the section line is 33’ on each side of the center line of the surveyed section line.² If the land was selected under the AMHEA on or after April 7, 1963, the section line is 50’ on each side of the center line of the surveyed section line.

2. A statutory section line easement exists on trust land that was surveyed, state-owned land at the time it was designated as replacement trust land by sec. 40(a)(2), ch. 5 1994 FSSLA, as amended by ch. 1, SSSLA 1994 (“HB 201”). Such a section line easement is a state section line easement that is 50’ on each side of the center line of the surveyed section line.

¹ The term “survey,” as used herein, means an actual, on-the-ground survey that has been approved/accepted by BLM and does not include a protraction diagram. DNR and TLO acknowledge that there have been differing legal positions asserted by different parties over the years regarding whether a section line easement can statutorily attach to a protracted section line. However, DNR and TLO currently are unaware of any trust land that is or was located only by a protraction and, therefore, it is not necessary at this time to consider this issue with respect to trust land. Should DNR or TLO identify a protracted section line on trust land in the future, they will work through that issue under the facts and circumstances presented at that time.

² This is the date AS 19.10.015 was enacted, which provides that “all officially proposed and existing highways on public land not reserved for public uses are 100 feet wide.” This modified the width of federal section line easements that were accepted under AS 19.10.010, where the land was still unreserved federal land. Some federal land that was conveyed to the state as original trust land under the 2009 Closeout Agreement was land selected under state entitlements other than the AMHEA. Those lands will be reviewed to determine, on a case-by-case basis, whether a federal section line easement arose on them.

3. There are no statutory section line easements on trust land that was selected by and conveyed to the State under the AMHEA ("original trust land"), except as provided in Paragraph 1. For example, no state statutory section line easement arose on original trust land when it was legislatively designated as general grant land in 1978, because such legislation was void. *State v. Weiss*, 706 P.2d 681 (Alaska 1985).

4. For certainty of title and because the public may have detrimentally relied on them, the TLO intends to honor plats that were finalized and approved by appropriate State signature before HB 201 (as amended) became effective in 1994 and that show a section line easement on original trust land that did not arise as described above. The cost of correcting and potentially litigating over such plats likely would vastly outweigh the diminishment in value of the lands erroneously encumbered. However, the TLO may challenge or seek compensation for any plats not approved by the AMHTA or the TLO that were finalized after HB 201 (as amended) became effective in 1994 that erroneously show a section line easement on original trust land.

5. For certainty of access and because the public may have detrimentally relied on them, the TLO will not challenge or charge for any public roads that were actually constructed by a state or local governmental entity or private party, with required approvals and authorizations, within a valid section line easement on trust land prior to the date HB 201 (as amended) became effective in 1994, whether the road is platted or not. This agreement does not include any road or portion of road that is not within a valid section line easement and does not grant or imply permission to expand or move such road, whether within the section line or not, which permission is expressly denied. Any expansion or change in location must be approved by the TLO and may require compensation to the AMHTA. For purposes of this agreement, "road" includes associated facilities necessary for a road, including signs, bike paths, turnouts and rest areas, drainage, and slopes. It does not include utilities unless state-owned and operated.

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