

From: John F. Bennett <johnf_bennett@dot.state.ak.us>
Sent: Friday, February 25, 2000 11:33 AM
To: judyc@dnr.state.ak.us
Subject: Rs2477 Regulations

Judy, here's some notes regarding our conversation on the RS-2477 Regulations -

1. 11AAC51.025 Section Line Easements - The issue of what constitutes "surveyed" lands has always been a gray area. The 1969 Opinions of the Attorney General No. 7 regarding Section Line easements left open the question of whether protracted section line constituted surveyed section lines for the purpose of establishing a section line easement. We have three primary classes of lands to consider. State lands, federal lands and privates lands conveyed from the federal government. You stated that for State lands, DNR considers protracted section lines to be surveyed for the purpose of establishing an easement. You stated that DNR would not consider a section line easement to existing on federal land unless the line was in fact surveyed. The question about private lands is in regard to the situation where the federal government conveys a township to a native corporation where only the exterior boundary of the township is surveyed at two mile intervals. I have generally considered the exterior boundary to be considered surveyed and subject to a section line easement if it meets the other requirements. The question is whether the unmonumented interior section lines are considered surveyed by virtue of protraction. The conveyance documents often specify the lands conveyed by section and aliquot part so that implies that they are conveyed protracted sections.
2. Although the regs identify the width of section line easements across federal lands, the feds thusfar have not recognized section line easements as they only accept RS2477 easements established by public construction and use. Will DNR refrain from issuing section line permits across federal lands or at least advise the applicant that construction of a road across federal land under a DNR permit will likely lead to a federal prison sentence? Just kidding. I suspect DNR will not pursue individual rights to use section line easements across federal lands.
3. 11AAC51.025 & 11AAC51.200 discuss RS2477 trail management and public easement management. It states that DNR is the manager unless the trail or easement is on the Alaska Highway system or has otherwise been transferred to DOT for management. Our only past experience in what we needed to do to incorporate an RS2477 trail into one of our project was the Valdez Gold Rush trail project. The eventual outcome of that was that Southcentral determined the appropriate handoff document was a letter of non-objection to DOT's use of the right of way for highway purposes. Will that still be the case and will it also apply when DOT needs to incorporate any of the DNR managed road & highway easements into a DOT project?
4. Management of section line easements across private lands will result in some amount of conflict between applicants desiring to use a section line easement for new construction and owners whose land the easements cross. By taking management authority of section line easements, does DNR propose to defend the applicants in conflicts against private property owners?
5. I mentioned that our 17 AAC regs regarding issuance of utility permits in section line easements is a DOT responsibility both where DOT maintains and existing facility and where there is a proposed facility (within our 6 year plan). The proposed project language leads to a conflict with the DNR reg in that these section lines will not yet be listed in the Alaska Highway system or yet transferred to DOT. The sharing of the management responsibility needs to be discussed.