

From: John Bennett
To: [REDACTED]
Subject: SLE"s in State Parks
Date: Tuesday, December 23, 2014 1:10:00 PM

[REDACTED] I have searched through my archives for background that might be useful for your review of section line easements and found the items listed below. For the purposes of presenting an accurate map of existing boundaries and easements we have the question of whether the special status of Chugach State Park lands and Alaska Railroad lands prevents them from being subject to 100-foot wide state section line easements under AS 19.10.010. If the answer is that the special status does not prevent application of AS 19.10.010, then the follow-up question is whether these SLEs apply only to lands in which the section lines have been surveyed or also to un-surveyed (protracted) section lines. Then as a part of the proposed land conveyances from Chugach State Park to the Alaska Railroad, if CSP lands are not currently impressed with SLEs, will the conveyances create them under AS 19.10.010. JohnB

11.6.63 Highway Legislation.pdf: This is a legislative council memo speaking to the intent of AS 19.10.010 and AS 19.10.015 that were being presented to the legislature at that time. The only odd thing about the memo is that it speaks to accepting a 100-foot wide strip between sections of federal public lands and the statute says "4-rods wide". So it is either an error in the memo or the bill was revised. If it wasn't an error it may have been an attempt at the time to increase the size of acceptance for federal section line easements to 100 feet from the original 66 feet set with the 1923 Territorial acceptance of the RS2477 grant.

Law of SLE in Alaska – Sedwick.pdf: I believe this paper was presented in 1983. On page 15, Sedwick states – "In the case of state lands which have been reserved for some public purpose, there will be a section line easement unless easement has been vacated. This results from the fact that AS 19.10.010 is applicable to all state lands. In addition to formal vacation procedures, it is possible that a court might find an implied vacation where the purpose of the reservation would be frustrated if the land were criss-crossed by highways." Later on page 24 he says "While it may be asserted that the legislation creating areas such as the Chugach State Park vacated any section line easements by necessary implication, this proposition has yet to be tested in court."

1983 Sedwick SLEs in Alaska.pdf: This is another Sedwick paper dated February of 1983. In this he discusses the Fisher v. Golden Valley case and notes that as it allows a section line easement to be used for a variety of purposes, including utilities, that "the decision in Fisher poses a potential threat to public reservations such as state parks, at least in cases where the parks have been officially surveyed." In this he is acknowledging that while an easement might exist for a protracted section line, it can't be used until it is surveyed.

7.8.85 RS2477 Protracted SLE Michael Frank Opinion.pdf: This is an 83 page draft opinion regarding "R.S. § 2477's interplay with AS 19.10.010". I am not aware that it ever was issued in final form so there may have been some concerns about his conclusions. The focus of the opinion is on protracted section lines. One question he considers is "How may the public use and develop

dedicated section line rights-of-way on state owned land, particularly state owned land that has been legislatively withdrawn from the public domain under the Alaska Constitution, art. VIII, section 7 for park purposes?” See pdf pages 79-83 for his discussion on SLEs in State Parks. First he says that the state park is well protected from incompatible SLE use because so few of the section lines have been surveyed. He then points out that legislatively designated parks have been removed from the public domain and are not subject to the multiple use land management rules under AS 38. He then says that his fact argues against any automatic application of AS 19.10.010 to impose SLEs over state lands but that as AS 19.05.110 allows for the taking of public lands held for another public use the implication is that AS 19.10.010 would apply to Parks lands. Even though AS 19.10.010 may impose SLEs on Parks, their AS 41.21 statutes provide them with the authority to control access to and across their lands. My views of SLEs within the Park boundaries are that:

- AS 19.10.010 applies SLEs to all state lands including those removed from the public domain for legislatively designated areas such as parks.
- Most of the Park lands are unsurveyed and while the SLE may apply to the protracted section line, they couldn't be used until surveyed.
- To the extent that Park lands are surveyed, the AS 19.10.010 SLEs would attach
- Parks AS 41.21 authority protects them against incompatible use of SLEs within the park by utilities and others desiring access across Parks lands, so for most people, it doesn't matter whether there are SLEs across Park land or not.
- Even if all I have stated above is incorrect, any lands disposed by Parks outside of state ownership, (including ARRC) would have 100' wide SLE imposed upon it by AS 19.10.010.

11.19.86 DNR SLE Policy.pdf: This policy makes reference to the draft Frank opinion on protracted SLEs and holds that easements along protracted section lines are unusable until such time as their location is determined by survey. DNR may establish reservations along unsurveyed section lines by including appropriate language in the conveyance documents. Adopted from the Frank opinion is the concept that as SLEs likely do not attach to protracted section lines, easements reserved along section lines in the conveyance document will “become a fixed easement for the purposes outlined in AS 19.01.010 but shall not be called a section line easement.”

12.19.96 Meachum SLE Opinion.pdf: Meachum, a former AAG wrote this memo for the Mental Health Trust when he was in private practice. His subject was application of federal and state SLEs to both “original” and “replacement” Mental Health Trust lands. “The plain language of the statute imposes this easement on all tracts of land owned by the Territory and State of Alaska, whether they are unrestricted general grant lands, community grant lands, original Mental Health grant lands, University grant lands, school sections, state parks, or any other category of state land.” He notes that while federal SLEs based on the acceptance of the RS2477 grant are exempted from “lands reserved for public uses”, AS19.10.010 has no such exemption. This memo would support the application of state SLEs to Parks (and ARRC?) lands.

5.3.01 Updated 11 AAC 51 Regulations: Including the 11 AAC 51.025 Section Line Easement regulations. DNR still maintains their website for the 2001 Public Easement regulations project at <http://dnr.alaska.gov/mlw/trails/11aac51/>. There was supposed to have been a Phase II regs project shortly after these were adopted that would deal with issues such as which agency manages SLEs and how the easements were to be managed but that never happened. What I find very

interesting are the many links to comments offered by land owners, agencies and other organizations and the DNR responses. For the most part I found the DNR responses to be well thought out and provides some insight regarding their views on a variety of easements including SLEs.

2.12.10 Baker letter re Protracted SLE.pdf: This item may not be very helpful. Back in 2010 I had asked the DNR Chief Surveyor about DNR's current position regarding section line easements along protracted section lines. He sent me a copy of a letter from John Baker to the Dept. of Interior in which he says that the State's position is that they do exist under AS 19.10.010 but as a practical necessity, they must be surveyed before they can be used. Shortly after I received the letter the Chief Surveyor asked me to not distribute it due to some problem with the position taken. Unfortunately, I never heard what the problem was.

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