

MEMORANDUM  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF TECHNICAL SERVICES

State of Alaska

TO: James R. Anderson *JRA*  
Acting Director

Clyde Duren *Clyde Duren*  
Chief Cadastral Surveyor

FROM: Ed Yarmak *EY*  
Survey Operations Supervisor

DATE: March 15, 1983

FILE NO: 100-1

TELEPHONE NO: 265-4184

SUBJECT: Section Line Easement

As requested by you, I am submitting our comments on section line easements

The Division of Land and Water Management and the Division of Technical Services do not have differing policies on the current status of section line easements. The Division of Land and Water Management's Policy and Procedure Manual, Chapter 5122, Section 02 page 3 of 13, paragraph 3.6 states:

- 3.6 The section line dedication can only be used for public purposes where the particular area has been surveyed according to the rectangular grid. Exterior boundary surveys are not part of this grid system. There are no section lines in the area until further subdivisional surveys are carried out in a manner acceptable to the state. Before a section line easement can be used, the location of the section line must be surveyed.

The Division of Technical Services, Cadastral Survey Section agrees with and follows the above policy.

1969 Attorney General Opinion No 7, point No. 7(b) states:

- b. The public lands must be surveyed and section lines ascertained before there can be a complete dedication and acceptance of the federal offer. 15/

- 15/ Note, however, that the Alaska statutes apply to each section line in the state. Thus, where protracted surveys have been approved, and the effective date thereof published in the Federal Register, then a section line right-of-way attaches to the protracted section line subject to subsequent conformation with the official public land surveys.

The Cadastral Survey Section agrees with A.G. Opinion No. 7, point 7(b) and also Note 15, that there is an attachment of a section line easement for any unsurveyed section line in the state. We further feel the Alaska Protraction Diagrams mentioned in the Federal Register were for Oil and Gas offers to lease lands and that the diagrams are only a plan of survey. The approved Protraction Diagrams only show the computed latitude and longitude of unsurveyed township corners. The true position of the township corners or section corners can not be determined until surveyed with monuments in the ground, with the proper corner identification stamped on the cap. A plat of survey approved and filed in the appropriate Recording District would complete the dedication of the section line easements for public highways. The final survey may or may not conform to the protraction maps.

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A portion of Alaska Statute 19.10.010 states: If the highway is vacated, title to the strip inures to the owner of the tract of which it formed a part by the original survey.

Cadastral Survey feels, in the case of section line easements, that if there is no original survey, there is nothing to vacate.

A.G. Opinion No. 7 states: In summary, each surveyed section in the state is subject to a section line right-of-way for construction of highways if:

1. It was owned by or acquired from the Territory (or State) of Alaska at any time between April 6, 1923, and January 18, 1949, or at any time after March 26, 1951, or;
2. It was unreserved public land at any time between April 6, 1923, and January 18, 1949, or at any time after March 21, 1953.

The width of the section line reservation is four rods (2 rods on either side of the section line) as to:

1. Dedication of territorial land prior to January 18, 1949 and
2. Dedications of federal land at any time.

The width of the reservation is 100 feet (50 feet on either side of the section line) for dedications of state or territorial land after March 26, 1951. 16/

Opinion No. 11, 1962 Opinions of the Alaska Attorney General, to the extent it is inconsistent with the views expressed herein, is disapproved

Cadastral Survey agrees with the summary of Opinion No 7

Alaska Statute 38.040.045 states:

Section 38.04.045. Survey and Subdivision. (a) State land to be conveyed in fee simple or less than fee simple estate shall be subdivided so that lots and tracts are of a size which fits the requirements of individual users and reflects the physical characteristics of the land, except that in locations where there is an inadequate margin between the demand for and the supply of vacant land, the state may make land available for private acquisition in parcels that are larger than required for individual use.

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(b) Before the conveyance of surface rights to state land, an official cadastral survey shall be accomplished, unless a comparable, acceptable survey exists that has been conducted by the Federal Bureau of Land Management. The rectangular survey section corner positions shall be monumented and shown on a cadastral survey plat approved by the state. However, for those areas where the state may wish to convey surface estate outside of an official cadastral survey grid, the director may waive monumentation of all individual section corner positions and substitute an official control survey with control points being monumented at approximately two-mile intervals and shown on control survey plats approved by the state. No portion of land to be conveyed may be located more than two miles from such a survey control monument. The lots and tracts in state subdivisions shall be monumented and the cadastral survey and the plats for the subdivision shall be approved by the state. Where land is located within a municipality with planning, platting, and zoning powers, plats for state subdivisions shall comply with local ordinances and regulations in the same manner and to the same extent as plats for subdivisions by other landowners. State subdivisions shall be filed in the district recorder's office. The requirements of this section do not apply to land made available through a cabin permit system, material sales, or short-term leases; however, for short-term leases the lessee must comply with local subdivision ordinances unless waived by the municipality under procedures specified by ordinance. (§ 5 ch 181 SLA 1978).

Under .045(b) above, the cadastral survey system is waived to allow for the entry on and conveyance of surface rights for remote parcel areas. By waiving the rectangular survey system, the parcels are alienated from the system when the cadastral survey is extended within the area. It is understood by the Cadastral Survey Section that when the section lines are surveyed and platted for the remote parcel areas, there will also be a dedication of the section line easements. This is in accord with policies and Alaska Statutes. It is also felt that any remote parcel sites that have been surveyed, platted and a patent conveyed would be segregated from the rectangular survey system, since the system was waived to allow for their entry and conveyance.

It is our belief that a survey of public lands under the Rectangular system of surveys creates boundaries and therefore, section lines have no existence prior to survey, and are incapable of accurate description or unclouded conveyance prior to survey.

Mr. Frechione's statements in his memo of February 24, ignores or he does not discuss the policy and procedures that were established by the Division of Forest, Land and Water Management prior to the previous Director.

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The same policy and procedures were presented by Mr. Pat Beckley, of the Southcentral District office, as a representative of DNR, on November 17 1982, at seminar of the International Right-of-Way Association.

The paper that Mr. Jack Sedwick gave at the Survey and Mapping Conference was, to our knowledge, written by him and there was no input from anyone at Technical Services. But as Mr. Sedwick stated: 'not all points made are accepted by all of the authorities or knowledgeable attorneys who have examined the issues'. He does quote Land and Water Management's policy, "that section line easements cannot be used until the section lines are actually surveyed."

It is a well known fact that the placing of a floating easement encumbrance on a plat or in a state patent issued to a member of the public clouds the title. Title companies will not insure title, banks will not loan money and the holder of the patent feel jilted by government.

Another known fact is that the latest plat of record prevails. This causes a further problem for us to consider in line with protractions and section line easements. A protraction diagram was approved in 1960, the BLM surveyed the township boundaries and alienated a U.S. Survey in each township. The BLM approved the survey plats in 1974. The state received federal patent to Tract "A" of each township. If the latest plat of record prevails, then there are no protracted sections or attachment of section line easements in Tract A.

The Cadastral Survey Section concurs that a Departmental policy should be established but further recommends a State wide policy be considered that serves the public, guarantees unclouded title, and is not self serving to any division or department.

EY:sa

cc: Joseph C. Burch  
Deputy Director