

Section Line Easements

Basis for section line easements:

Act of July 26, 1866	(RS 2477)	(43 CFR 2822, 43 USC 932)
Chapter 19 SLA	April 6, 1923	
Chapter 123 SLA	March 26, 1951	
Chapter 35 SLA	March 21, 1953	

The Mining Law of 1866 made an offer of free rights of way over un-reserved public land for highway purposes. This offer became effective on April 6, 1923, when the territorial legislature passed chapter 19. Any lands in Alaska appropriated and patented after April 6, 1923 were subject to an easement along all sections, 4 rods (66 feet) wide.

The section line easement law remained in effect until January 18, 1949. On this date the legislature accepted the compilation of Alaska law which also repealed all laws not included. The section line easement law was repealed.

On March 26, 1951, the legislature passed an easement law which dedicated a section line easement 100 feet wide along all section lines on land owned by or acquired from the territory. This was modified on March 21, 1953, to include an easement 4 rods wide along all other section lines in the territory.

To have an easement on a section line means that the section line must be surveyed under the normal rectangular system. On large areas such as State or Native selections, only the exterior boundaries are surveyed, hence there are no section line easements in these areas (until further subdivisional surveys are carried out.)

Since all Federal land is reserved in Alaska at this time and since the section line easement attaches only unreserved public land (at the time of survey or at the same time after survey), it is unlikely that the section line easement will have much applicability on Federal lands in the future. In any case, the section line easements will have no applicability on any finalized D-2 land since the land will be reserved at the time of any survey.

Land surveyed by special survey or mineral survey are not affected by section line easements since such surveys are not a part of the rectangular net.

Section line easements relate solely to highway or road use by the public. They cannot be used for powerlines or restricted private access. The date of survey and appropriation of the land must be considered in determining the presence of a section line easement.

See Ratter for Harris 2/21

SECTION LINE EASEMENT RESEARCH TECHNIQUE

1. Identify property on each side of section line from a known public road to property in question.
2. From the Federal Status Plat, extract the patent number of each parcel identified.
3. Either from BLM's patent file or Historical Index, extract the serial number of the filing which led to patent.
4. Using the serial number, extract from the serial books, the date of the entry leading to patent.
5. From BLM's plats of survey, extract the date of plat approval.
6. Using the date of entry and the date of survey plat approval, prepare an analysis of the data as follows:
 - a. If date of entry predated survey plat approval there is no easement.
 - b. If entry predates April 6, 1923 (date of enabling legislation for section line easements) there is no section line easement.
 - c. If survey plat approval predates April 6, 1923 but date of entry is after April 6, 1923, but before January 18, 1949, there is a section line easement.
 - d. If survey plat approval is during the period of January 18, 1949 and March 21, 1953 and date of entry falls within this period, there is no section line easement.
 - e. If survey plat approval is during the period of January 18, 1949 and March 21, 1953 and date of entry falls after March 21, 1953, there is a section line easement.
 - f. If the land is in State ownership, there is a section line easement.
 - g. If the land was disposed of by the State or territory during the period of January 18, 1949 and March 26, 1951, there is no section line easement.
 - h. United States Surveys (U.S.S. and Number) and Mineral Surveys (M.S. and Number) are not a part of the rectangular net of survey. If the rectangular net is later extended, it is established around these surveys. There are no section lines through a U.S.S. or M.S., therefore, no section line easements can exist on such areas.

There may be many other situations which will require evaluation and decision on a case by case basis. Attachments are included to demonstrate some of the above points.

§ 931b. Repealed. Aug. 10, 1956, c. 1041, § 53, 70A Stat. 641

Historical Note

Section, Act July 24, 1946, c. 506, § 7. way to States, etc., and is now covered by Stat. 643, authorized the Secretary of War to grant easements and rights-of-

§ 931c. Permits, leases, or easements; authorization to grant; payment; limitation

The head of any department or agency of the Government of the United States having jurisdiction over public lands and national forests, except national parks and monuments, of the United States is authorized to grant permits, leases, or easements, in return for the payment of a price representing the fair market value of such permit, lease, or easement, to be fixed by such head of such department or agency through appraisal, for a period not to exceed thirty years from the date of any such permit, lease, or easement to States, counties, cities, towns, townships, municipal corporations, or other public agencies for the purpose of constructing and maintaining on such lands public buildings or other public works. In the event such lands cease to be used for the purpose for which such permit, lease, or easement was granted, the same shall thereupon terminate. Sept. 3, 1954, c. 1255, § 1, 68 Stat. 1146.

Historical Note

Legislative History: For legislative history and purpose of Act Sept. 3, 1954, see 1954 U.S. Code Cong. and Adm. News, p. 3922.

§ 931d. Same; additional authority

The authority conferred by section 931c of this title shall be in addition to, and not in derogation of any authority heretofore conferred upon the head of any department or agency of the Government of the United States to grant permits, leases, easements, or rights-of-way. Sept. 3, 1954, c. 1255, § 2, 68 Stat. 1146.

§ 932. Right-of-way for highways

The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted. R.S. § 2477.

Historical Note

Derivation. Act July 26, 1866, c. 262, § 1, 14 Stat. 253.

Columbia River Highway. Act Mar. 4, 1921, c. 164, 41 Stat. 1437, authorized the Secretary of War to grant to the State

of Oregon, for the construction, etc., of the Columbia River Highway, a right of way over certain lands acquired and held by the United States in connection with the improvement of the Dallas-Celilo section of the Columbia River.

Sec. 19.05.140. Penalties. A person who violates any provision of chs. 5—25 of this title is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$500, or by imprisonment in jail for a period not to exceed one year, or by both. (§ 7 art VII title II ch 152 SLA 1957)

Am. Jur. reference.—25 Am. Jur.,
Highways and Streets, § 73.

Chapter 10. State Highway System.

Article

1. Designation, Marking and Use (§§ 19.10.010—19.10.100)
2. Planning (§§ 19.10.110—19.10.160)
3. Construction (§§ 19.10.170—19.10.260)

Article 1. Designation, Marking and Use.

Section	Section
10. Dedication of land for public highways	60. Regulation of weight and load of vehicles and use of highways during certain seasons
15. Establishment of highway widths	70. Determination of safe speed limits
20. Designation of state highway system	80. Designation of through highways
30. Responsibility for system	90. Erection and maintenance of guard rails
40. Uniform system of marking and posting	100. Closing highways
50. Traffic control signals	

Sec. 19.10.010. Dedication of land for public highways. A tract 100 feet wide between each section of land owned by the state, or acquired from the state, and a tract four rods wide between all other sections in the state, is dedicated for use as public highways. The section line is the center of the dedicated right-of-way. 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. (§ 1 ch 123 SLA 1951; am § 1 ch 35 SLA 1953)

The word "dedicate" is synonymous with the word "convey." 1962 Ops. Att'y Gen., No. 11.

The legislature did not attempt to dedicate easements on lands not owned by the territory of Alaska. 1962 Ops. Att'y Gen. No. 11.

State had right-of-way only for width of road utilized in past and now. — Where the state concluded that an existing right-of-way of sixty-six feet in width was established pursuant to the provisions of 43 USC § 932, the superior court sustained defendant's position that the state "only has a right-of-way for the width of the road utilized in the

past and now by the Highway Department," the width of the road utilized "in the past and now by the Highway Department" being approximately thirty feet. *State v. Fowler*, 1 Alaska L.J. No. 4, p. 7 (April, 1963).

For interpretation of SLA 1923, ch. 19, SLA 1951, ch. 123, and SLA 1953, ch. 34, see 1962 Ops. Att'y Gen., No. 11.

Applied in *Clark v. Taylor*, 9 Alaska 298 (1938).

Am. Jur. reference.—25 Am. Jur., Highways and Streets, §§ 26, 55, 254.

Sec. 19.10.015. Establishment of highway widths. It is declared that all officially proposed and existing highways on public lands