Office Memorandum UNITED STATES GOVERNMENT
Alaska Road Commission - Headquarters

TO : District Engineer, Anchorage DATE: September 20, 1955

FROM : Chief Engineer, Headquarters

SUBJECT: Sidewalk Along Spenard and Campbell Roads

RECEIVED SEP 23 1955 ALASKA ROAD COMMISSION ANCHORAGE

Reference is made to your memorandum of September 16, 1955 and our wire in reply dated September 19, both concerning the above subject. We consider our legal right-of-way at the points involved to be 66 feet or 33 feet on each side of the centerline.

Our position in this matter is sustained by a previous legal opinion of a court of proper jurisdiction within the Territory and by a brief of statutes and orders, issued to members of the Alaska Field Staff Subcommittee by former legal counsel of the Bureau of Land Management, Anchorage. He said, "The Act of June 30, 1932, authorizes the construction of roads and highways over the vacant and unappropriated public lands under the jurisdiction of the Department of the Interior. This statute, like R.S. 2477, does not specify the width of the rights-of-way which may be established thereunder. Therefore, unless maps were filed in the proper land offices, as contemplated by the 1932 Act, showing the width of the right-of-way appropriated, the right-of-way would be limited to 66 feet or 33 feet on each side of the centerline of the road or highway, as against valid claims or entry subsequently initiated prior to Public Land Order No. 601 of August 10, 1949."

The proposed installation of the sidewalk shall therefore be located on or within the outer four feet of our asserted legal width of right-of-way of 66 feet.

Wm. J. Niemi
Chief Engineer

an application for entry is pending and another application is later filed, the second application should not be rejected but suspended to await action on the first. Jerry Watkins (17 L. D., 148). Cluster's application should, therefore, have been suspended to await final action on the application for Indian allotment. It is, however, unnecessary to hold Cluster's application longer in suspense as the Commissioner of Indian Affairs reported that he was unable to certify that the Indian applicant is entitled to an allotment on the public domain and recommended that the application be rejected. It is so ordered. The application for Indian allotment being out of the way, Cluster's homestead application will be allowed, if no other objection appear.

The decision is reversed and papers remanded for further appropriate action.

INSTRUCTIONS.

March 15, 1915.

ALASKA LANDS—RESERVATION OF ROADWAY IN PATENTS.

Directions given that the roadway reservation mentioned in section 10 of the act of May 14, 1898, be omitted in all future patents for lands in Alaska.

JONES, *First Assistant Secretary:*

The Department on February 26, 1914, requested an expression of opinion from your [Commissioner of the General Land Office] office as to whether the roadway reservation mentioned in section 10 of the act of May 14, 1898 (30 Stat., 409), should be held applicable to all nonmineral claims abutting on navigable waters in the district of Alaska, and also whether the practice of inserting such a reservation in patents should be continued. On July 6, 1914, you submitted your conclusions and recommended, in view of the fact the statute contained no direction that the reservation of a roadway should be recited in any patent, and the further fact that the ultimate determination of the extent of the applicability of the roadway reservation rests with the courts, that the recital be omitted from future patents.

This roadway reservation is found in section 10 of said act and that section provides primarily for the purchase of trade and manufacture sites and limits the frontage of such claims along navigable waters to 80 rods. It is prescribed that there shall be reserved between tracts sold or entered under the provisions of the act a space of 80 rods in width on lands abutting on navigable waters, and also that the Secretary of the Interior may grant the use of such reserved lands for landings and wharves—

with the provision that the public shall have access to and proper use of such wharves, and landings, at reasonable rates of toll to be prescribed by said Secretary, and a road-

way sixty feet in width, parallel to the shore line as near as may be practicable, shall be reserved for the use of the public as a highway.

In the regulations of January 13, 1904 (32 L. D., 424, 442), it was stated that:

Since it is its purpose to reserve a roadway for public use as a highway along the shore line of navigable waters, it is held to relate to the lands entered or purchased under this act, as well as to the reserved lands; otherwise it would serve little or no purpose.

The Ninth Circuit Court of Appeals on October 30, 1910, in the case of Dalton *v.* Hazelet (182 Fed., 561, 571, 572), which involved a patented soldiers' additional homestead entry abutting on navigable waters in which it was contended that the patentees littoral rights were cut off by this roadway reservation, said:

The last clause above quoted refers to a roadway through the reserved lands previously described, and not through lands granted in fee simple under the homestead laws. * * * There is no provision in this statute (act of March 3, 1903, 32 Stat., 1028) reserving a roadway or making any other reserve above high-water mark through lands granted under the homestead laws. Furthermore, no such reserve is made in the patent. The patent is in the record, and, as previously stated, the land is described by courses and distances as containing the specific quantity of 163.65 acres. The lands granted are made subject to a reservation; but it is the reservation of a "right of way thereon for ditches and canals constructed by authority of the United States," thus excluding by implication, if that were necessary, a reservation under the act of May 14, 1898. It follows that plaintiff's littoral rights were not cut off either by the railroad right of way or by a supposed roadway under the latter act.

It is well established that attempted reservation or limitation, which is not prescribed or authorized by law, when inserted in patents for public lands, has no operation and does not attach to or affect the title conveyed. Officials of the land department, being merely agents of the law, can not create reservations or make exceptions affecting titles to public lands.

In the case of Deffeback *v.* Hawke (115 U. S., 392, 406), which involved a patent under the mining laws, the court said:

The land officers, who are merely agents of the law, had no authority to insert in the patent any other terms than those of conveyance, with recitals showing a compliance with law and the conditions which it prescribed.

The case of Davis *v.* Weibbold (139 U. S., 507, 527, 528), involved the validity of a limiting clause inserted in a townsite patent, and the court there said:

But we do not attach any importance to the exception, for the officers of the land department, being merely agents of the Government, have no authority to insert in a patent any other terms than those of conveyance, with recitals showing compliance with the conditions which the law prescribes. Could they insert clauses in patents at their own discretion they could limit or enlarge their effect without warrant of law. The patent of a mining claim carries with it such rights to the land which includes the claim as the law confers, and no others, and these rights can neither be enlarged nor diminished by any reservations of the officers of the land department, resting for their fitness only upon the judgment of those officers.

The case of Shaw v. Kellogg (170 U. S., 312, 337), involved the approval of one of the so-called Baca Float selections, and the court there used the following language:

> What is the significance of, and what effect can be given to the clause inserted in the certificate of approval of the plat that it was subject to the conditions and provisions of the act of Congress? We are of opinion that the insertion of any such stipulation and limitation was beyond the power of the land department. Its duty was to decide and not to decline to decide; to execute and not to refuse to execute the will of Congress. It could not deal with the land as an owner and prescribe the conditions upon which title might be transferred. It was agent and not principal. Congress had made a grant.

With respect to the limitations recited in the patent for placer mining claims, the Supreme Court in Sullivan v. Iron Silver Mining Company (143 U. S., 431, 441), said:

> The exception of the statute can not be extended by those whose duty it is to supervise the issuing of the patent.

In the recent case of Burke v. Southern Pacific Railroad Company (234 U. S., 669), the Supreme Court had occasion to consider the mineral exception clause recited in railroad patents. In the course of that opinion, delivered by Mr. Justice Van Devanter, the patent cases above mentioned were cited and discussed. The court at pages 709–710 said:

> The terms of the patent whereby the Government transfers its title to public land are not open to negotiation or agreement. The patentee has no voice in the matter. It in no wise depends upon his consent or will. He must abide the action of those whose duty and responsibility are fixed by law. Neither can the land officers enter into any agreement upon the subject. They are not principals but agents of the law, and must heed only its will. . . . Nor can they indirectly give effect to what is unauthorized when done directly . . . they can not alter the effect which the law gives to a patent while it is outstanding. . . . The mineral land exception in the patent is void.

Even if it should be ultimately determined by the courts that the highway reservation under consideration applies to all claims except those under the townsite and mineral land laws (see section 26, act of June 6, 1900, 31 Stat., 321), it does not follow that patents need recite such a reservation in order that it be effective, for if such reservation is created and exists by virtue of the law, a failure to insert a recital thereof in the patent issued would not defeat the reservation. The statute contains no direction to the officials of the land department to insert any such recital in patents issued, as certain other statutes do. For instance, the act of August 30, 1890 (26 Stat., 391), prescribes:

> That in all patents for lands hereafter taken up under any of the land laws of the United States . . . west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described, a right of way thereon for ditches or canals constructed by the authority of the United States.

The recent Alaska Railroad Act of March 12, 1914 (38 Stat., 305, 307), contains the following provision:

And in all patents for lands hereafter taken up, entered or located in the Territory of Alaska there shall be expressed that there is reserved to the United States a right of way for the construction of railroads, telegraph, and telephone lines, etc.

In view of the foregoing and of the doubt and conflict of opinion existing as to the scope and applicability of the Alaska highway reservation clause, I deem it advisable that there be omitted from all future patents any recital or mention of such reservation. Your office will, therefore, discontinue the present practice of inserting in Alaska patents a recital of a roadway reservation, pursuant to the act of May 14, 1898, *supra*.

ENLARGED HOMESTEAD ACT—SECTIONS 1 TO 5 EXTENDED TO SOUTH DAKOTA.

CIRCULAR.

[No. 389.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 16, 1915.

REGISTERS AND RECEIVERS,
United States Land Offices, Bellefourche, Gregory, Lemmon, Pierre, Rapid City, and Timber Lake, South Dakota.

SIRS: 1. Section 2 of the act of Congress approved March 4, 1915 (Public, No. 299), provides that the provisions of the first five sections of the enlarged homestead act of February 19, 1909 (35 Stat., 639), as amended, shall extend to the State of South Dakota.

2. Your attention is, therefore, directed to said sections of the act mentioned (as amended down to March 2, 1915), copied on pages 32 and 33 of homestead circular No. 290, approved January 2, 1914; also to the regulations under that legislation, found in paragraphs 43, 44, 45, 46, 47 and 50 of said circular. [43 L. D., 18-21.]

3. Public Act No. 279, approved March 3, 1915, provides for the allowance of additional entries under the enlarged homestead act after submission of proofs on the original filings, provided the parties still own and occupy the tracts first entered; and the first section of Public Act No. 299 (above referred to), provides for a preference right of entry to be accorded, where designation of the land involved has been made pursuant to the applicant's petition. Instructions will shortly be issued under said recent legislation.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved, March 16, 1915:
A. A. JONES,
First Assistant Secretary.

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

State of Alaska

TO: James R. Anderson
Acting Director

Clyde Duren
Chief Cadastral Surveyor

FROM: Ed Yarmak
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.

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.

(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 specificed 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.

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 encumberance 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 recommneds 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

MEMORANDUM State of Alaska

DEPARTMENT OF NATURAL RESOURCES - DIVISION OF LAND AND WATER MANAGEMENT
NORTHCENTRAL DISTRICT - 4420 AIRPORT WAY, FAIRBANKS, ALASKA 99701

TO: Esther Wunnicke
Comm[illegible]
Dept

DATE: February 24, 1983

Thru: Thom
Dire
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Thru: Jerr
Dist

From: Jim
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Reta

4-5- Grant - Please review before the 1:30 P.M. April 7 mtg. in Room 48 on section lines (Tom wants you to attend.) Thanks - (David M. Ford)

Situation:
The Division of Land and Water Management and the Division of Technical Services have differing policies on the current status of section line easements in the State of Alaska. These differences are based mainly on a variety of legal opinions offered in the past and more recently by a former director of the Division of Land and Water Management on the subject of section line easements.

The Attorney General's Office in 1969 stated that survey of the section line is necessary before a section line easement can be created. However, protracted section lines are sufficient to establish an easement subject to confirmation by actual survey.

The Northcentral District Office believes that the Division has been operating under this opinion in the State's remote parcel disposal program which implies that the section line easements are extant even though the section lines have not been surveyed.

The lands offered for disposal under the remote parcel program have been opened for staking under the assumption that section lines are available for access easements since access easements to (or within) the disposal area are not identified prior to the actual land offering.

Several factors have recently surfaced which complicate matters. A position paper on section line easements in Alaska has been prepared by a former Director of the Division of Land and Water Management (attached). It states that section line easements cannot exist prior to the official survey which creates the section line. It was presented to a surveyor's convention in February, 1983, a[illegible] appears to be acting as policy being set [illegible] Division of Technical Services.

02-001A(Rev 10/79)

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The most recent remote parcel program opened for staking in the Northcentral District and the entrymen have begun filing their lease applications.

An entryman in the Volkmar Lake remote area staked a parcel that was bisected by a protracted section line. The staking instructions state that "All section lines across state lands have a reservation for right-of-way 50 feet in width on each side of the section line."

Upon filing his lease application he also requested that the section line easement which bisects his parcel be vacated. The district surveyor informed him that a section line easement did not exist because the section line had not been surveyed; therefore, vacation procedures were not necessary.

Discussion of Issues:
The legal origin for section line easements is the Act of July 26, 1866 supra which made an offer of a right-of-way over unreserved public land for highway purposes. This offer was accepted in Alaska on April 6, 1923, when the territorial legislature enacted Chapter 19 SLA. Beginning on that date, any land patented by the federal or territorial governments was subject to an easement four rods (66 feet) wide along the surveyed section lines.

The evolution of RS 2477 into a "section line easement," by definition required that the land be surveyed under the rectangular system. The centerline of the easement is the section line, therefore, lands surveyed by "special survey" or "mineral survey" are not affected by section line easements since such surveys are not a part of the rectangular system.

The section line easement law remained in effect as described above until January 18, 1949. On this date, the territorial legislature adopted a compilation of Alaska's laws. In doing so, they also repealed any law not included in the compilation. The section line easement law was not included and thereby repealed. This repeal began a period of time, from January 18, 1949, to March 26, 1951, when no new section line easements were established either on federal or territorial lands or lands acquired therefrom.

On March 26, 1951, the territorial legislature passed an easement law (Chapter 123 SLA) which dedicated a section line easement 100 feet wide on lands owned by or acquired from the territory. Note that the 1951 law did not provide a section line easement on federal lands. The 1951 law was modified on March 21, 1953, so as to provide an easement 100 feet wide on [illegible] territorial lands and 66 feet (four rods) wide on all other lands [illegible] under the rectangular system. From March 21, 1953 on, the section line easement legally remained the same until its revocation on federal lands by PL 94-579, October 21, 1976. Its use on federal lands, however, has been continually reduced since 1953 as more and more land became appropriated for various uses (withdrawals, settlement claims, etc.). On March 28, 1974, all remaining vacant federal land was withdrawn by PLO 5418, thereby effectively removing section line easements from federal lands. It should be noted that while the section line easement did not apply to land patented by the federal government between January 18, 1949 and March 21, 1953, RS 2477 itself was still operative during that time on unreserved federal lands.

The disposals section, specifically, has been operating under the Attorney General's opinion of 1969 that all state land, surveyed or unsurveyed, has the 100 foot easement. This is reflected in all disposal preliminary decisions/final findings, sale brochures, and, in the case of remote parcel selection areas, in the survey instructions.

The Remote Parcel Program allows eligible individuals to enter on to state land for the purpose of staking a parcel of land. They may lease that parcel for five years with an option to renew for an additional five years. Within that lease period they must survey it if they desire to purchase it.

The state has offered (and continues to offer) land in remote areas that do not have surveyed section lines. Staking instructions issued to eligible entrymen state that [illegible] across state land [illegible] for a 100' access easement.

The Northcentral District recognizes that a section line easement is created by the survey of those sections. However, the "implied" easement in unsurveyed sections is strengthened by the fact that the preliminary decision and final written findings determining those areas for disposal established an access

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easement (perhaps mistakenly referred to as a section line easement). This establishment should be recognized as an access easement established pursuant to A.S. 38.05.330.

Recommendation:
It is the Northcentral District's recommendation that a departmental policy be established to avoid further confusion. With the imminent spring disposal, it is recommended that the department's policy statement be included in the spring sale brochure.

It is further recommended that section line easements on unsurveyed land be established under A.S. 38.05.330 in the preliminary decision to avoid future conflicts.

Note: A.S. 19.10.010 states "a tract of land 100 feet wide between each section of land owned by the State, . . . is dedicated for use as public highways. The section line is the center of the dedicated right-of-way."

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

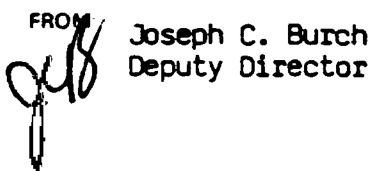
TO: James R. Anderson
Director

DATE March 31, 1983

FILE NO: 120-1

TELEPHONE NO: 265-4194

FROM: Joseph C. Burch
Deputy Director



SUBJECT: RS 2477 Easements (State Section Line Easements Only)

The following are my comments to the 2/24/83 memo of Jim Frechione on the above general subject.

Background

1. AS 19.10.010, SLA 1953 (copy attached) dedicates a tract 100 feet wide between each section of land owned by the State, or acquired from the state . . .

   This is an express statutory intention to dedicate, . . . "and they apply to "each" section of land in the state as it becomes eligible for section line dedication. Public lands which come open through cancellation of an existing withdrawal, reservation, or entry and subsequent acquisitions by the territory (or state), are all subject to the right-of-way.[1] (emphasis added)

2. Attorney Generals Opinion #7, 1969 (copy attached).

   Point #7, backed up by footnote 14 notes "(However, once there has been an acceptance, the dedication is then complete, and will not be affected by subsequent reservations, conveyances or legislation)". This acceptance is AS 19.10.010, hence the rules of construction for application based on dates of legislation, lack of legislation, amended legislation, and territory or state.

   Point 7b states "The public lands must be surveyed and section lines ascertained before there can be a complete dedication and acceptance of the federal offer."

   Footnote 15 states "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." (emphasis added)

[1] 1969 AG's Opinion #7

02-001A (Rev. 10/79)

3. 11 AAC 53.300 (copy attached)

   The regulation allows the director to waive the survey and platting requirements of additional easements or rights-of-way. It does not waive 11 AAC 53.300 (1)(A). (emphasis added)

4. Past DNR practices (copies attached for vacation of section line easements 1974, O.T.E. Seminar paper 1977, Survey instructions for surveying lands as provided by AS 38.05.077 March 21, 1977 and Fall FY 82 Remote Parcel Staking instructions).

   Additional data exists to support and to demonstrate that past DNR practice (prior to 9/82) has been to notice the public on reservations for section line easements whether surveyed or not at time of entry.

5. Paper by John W. Sedwick (copy attached).

Situation:

Currently the Division of Land and Water Management's Northcentral District land office takes exception to recent Division of Technical Services survey and plat approval.

Past practice within DNR has reserved the section line easement whether it has been created or is a future right through attachment. Items one (1) thru four (4) cited in the Background support the NCDO position. The last paragraph of John W. Sedwick's paper states this clearly, also.

The Division of Technical Services, Cadastral Survey Section, has changed the Departments and Attorney General's Opinion practice as of September 1982. This is a recent change not approved by the Director to my knowledge.

Options:

1. Do nothing and continue DTS survey instructions and platting per 9/82 DTS changes.

2. Request a new Attorney General's opinion recommending the State not accept protraction surveys published in the Federal Register as having section line easements attach to same.

3. Return to status quo (past practice) within DTS and DNR prior to 9/82

Recommendations:

1. Do nothing only prolongs the issue and continues confusion within the Department, which I believe is contrary to public interest.

2. The federal government's surveys and title to the state frequently leave the method of further subdivision of tracts of land to the State's discretion. If the State chooses to establish 'Section' lines following the BLM Manual of Survey Instructions or modification of the rectangular survey system, I believe it has this right. Occasionally the economics of the situation override the BLM Manual of Survey Instructions methodology for survey. The questions of the protracted location of section lines almost becomes mute with today's technology for surveying and past practices are reasonably defined as to accuracy. The 'future threat' approach does not carry much weight when proper survey analysis and instructions for survey are performed.

3. Protracted sections have been the practice of the State for alienating state interests since Statehood. Both surface and subsurface rights regulations and procedures have been contructed around this accepted state principal and theory. The Division of Technical Services should resolve the most recent practices and subsequent conflicts and return to the status quo.

Action:

1. Return to status quo.

2. Discuss this with DL&WM and regardless of which is followed, address the land management problems associated with the final choice of options and to resolve those future difficulties associated with the chosen option.

JCB:sa

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

State of Alaska

TO: James R. Anderson
Acting Director

Clyde Duren
Chief Cadastral Surveyor

FROM: Ed Yarmak
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. ~~[illegible]~~ 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 ~~[illegible]~~ 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. ~~[illegible]~~ 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. ~~[illegible] The final survey may or may not conform to the protraction maps.~~

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 [illegible] easements, that if there be no original survey, there is nothing [illegible] 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.

> (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 specificed 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. [illegible] This is in accord with policies and Alaska Statutes. [illegible]

It is our belief that a survey of public lands under the Rectangular system of surveys creates boundaries and therefore, [illegible]

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.

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'. [illegible]

[illegible] Title companies will not insure title, banks will not loan money and the holder of the patent feel jilted by government.

[illegible]. 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. [illegible]

The Cadastral Survey Section concurs that a Departmental policy should be established but further recommneds 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

266-1626

March 7, 1983

Re: Section Line Determination
SW 1/4 Sec. 6, T.17N.,R.3E.,S.M.
(U. S. Survey No. 5222)

Matanuska Susitna Borough
P.O. Box "B"
Palmer, Alaska 99645

ATTN: Pat Lancaster

Dear Mr. Lancaster:

Per your request for a determination by the State of Alaska, Department of Transportation and Public Facilities, as to the existence of a section line reservation in Township 17 North, Range 3 East, Seward Meridian along the westerly and southerly lines of Section 6; we find as follows:

The westerly line of said Section 6 being part of the Range line between T.17N., R.2E., S.M. and T.17N., R.3E., S.M. was surveyed during the 1913 to 1915 BLM public lands survey and the survey plat was approved August 10, 1916.

The section line reservation therefore took up along all surveyed section lines on April 6, 1923 the date of acceptance by the Territory of the Act of July 26, 1866 (43 U.S.C. 932; R.S. Section 2477).

The southerly line of said Section 6 took up as part of the protracted surveys in Alaska. The protracted section lines are subject to subsequent conformation with the official public land survey when performed. The land survey for T.17N., R.3E., S.M. was approved February 28, 1979.

Although U.S. Survey No. 5222 lying within said Section 6, T.17N.,R.3E., S.M. was surveyed in August of 1974, we find that the survey is subject to a reservation along the present approved section lines.

I have enclosed copies of other section line data which was discussed with you and requested.

Sincerely yours,

JAMES E. SANDBERG
Chief Right of Way Agent

TAR:id

Enclosures

MEMORANDUM (Brief Com[illegible]ications) State [illegible] Alaska TED

	Name	Dept./Div./Sect.	Mail Stop
TO:	Jim Sandberg	Chief R/W Agent - Anch, DOTPF	
FROM:	Meg Hayes	SCDM - DLWM - Anch Frontier Bldg	Telephone
SUBJ.:	Section line easements	Date 3/22/83	

I just received a copy of your 3/7/83 letter to Pat Lancaster at Mat Su Boro regarding the section line easement on USS 5222. It gives us more fuel for the ongoing argument between DLWM and DTS on section line easements. Thanks!

RECEIVED
MAR 29 1983
D.O.T. & P.F.
RIGHT OF WAY
ANCHORAGE

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
Division of Land & Water Management
Southcentral District
Pouch 7-005
3601 C Street
Anchorage, Alaska 99510

2-001C(12/8

ANS	COPY	Central Region RIGHT OF WAY ~~"Hwys" - "Aviation"~~	DATE RCVD: MAR 29 1983
	✓	RICHARDS, TED	
		JOHNSON, NONA	
		DAVIS, SHIRL	
		APPRAISALS	
		NEGOTIATIONS	
	✓	ENGR/PLANS	
		RELOCATION	
		PREAUDIT	
	✓	RECORDS: "Hwys"	
		RECORDS: "Aviation"	
		OTHER:	

Remarks: