Ted. your copy

See memo OCT. 9, 1979 From: Ted Smith (DNR) To: Director's Policy file.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

REX FISHER, JAMES HEIDER, BARBARA HEIDER, JIM PAYNE, and ANDREA CORSICK,

Plaintiffs,

vs.

GOLDEN VALLEY ELECTRIC ASSOCIATION, INC., FORREST G. OPPER, DOROTHY E. WILCOX OPPER, ALASKA TITLE GUARANTY COMPANY, FEDALASKA FEDERAL CREDIT UNION, WILCOX ASSOCIATES, DOUGLAS BEHAN, HENRY D. HODGE, KAREN J. HODGE, STATE OF ALASKA, NATIONAL BANK OF ALASKA, DONALD A. BROWN, ROBERT E. BONDURANT, AVERY GUY SIMMONS, FIRST NATIONAL BANK OF FAIRBANKS, DIETRICH STROHMAIER, JUDITH A. STROHMAIER, ROBERT WILKEN, DORIS WILKEN, RONALD G. BIRCH, NEENA BIRCH, AND DIANE PELZ,

Defendants

Case No. 4FA-79-1757

OPINION GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AS TO COUNTS II AND III OF PLAINTIFFS' COMPLAINT

Defendants plan to erect a power line along a section line easement which they claim exists on plaintiffs' lots. (The Heiders are the only plaintiffs involved in Counts II and III.) In furtherance of this plan defendants began clearing trees and bushes whereupon plaintiffs sought and were granted a preliminary injunction (9/20/79). On October 1, 1979, defendants requested a new hearing which was denied November 11, 1979. Plaintiffs moved for joinder of the State of Alaska and all affected property owners on October 10, 1979, which was denied as to the State and granted as to the others on November 5, 1979, in conformity

with defendants' partial opposition. On November 15, 1979 plaintiffs requested reconsideration of this decision, which request was denied on December 12, 1979. Default judgment was entered on July 1, 1980, against all of the added defendants except for Douglas Behan, who sent a note stating that he sided with plaintiffs, and the State of Alaska, which was joined solely because of its status as beneficiary of a deed of trust rather than on the issue of the section line easement as plaintiffs desired.[1] The State has filed a non-opposition to the pending motion.

The two issues presented by this motion for summary judgment are:

1. Is there a section line easement on plaintiffs' land?

2. Are public utility lines a permissible use within a section line easement?

The Court finds that there is an existing section line easement which may be used for public utility lines.

Congress by Act of July 26, 1866, granted the right-of-way for construction of highways over unreserved public lands. 14 Stat. 253, 43 USCA 932 (1964) RS Sec 2477. The general rule, with which the Supreme Court of Alaska is in accordance, requires some positive act by State officials manifesting intent to accept this grant in order that it be effective. Hammerly v. Denton, 359 P.2d 121 (Alaska 1961). Alaska accepted by enacting Chapter 19,

---

1. Plaintiffs' October 10th motion sought either joinder of the State or the striking of defendant's claim that the latter negligently failed to show a utility easement on the recorded plat of plaintiffs' lots. Both sides agree that this is a factual issue not appropriate for consideration at this time.

SLA 1923, which was repealed by failure to include it in ACLA 1949. A statutory acceptance of the standing federal offer was again enacted in 1951, modified in 1953, and is now embodied in AS 19.10.010. The federal statute was repealed in 1976.

Plaintiffs suggest several reasons why there is an inadequate factual basis for determining whether or not a section line easement exists on their land. First they argue that if either appropriation or survey of the land took place between 1949 and 1951, there is no section line easement. The Court disagrees. Attorney General's Opinion No. 7, 1979, suggests that the existence of the easement is not contingent upon an act of removal or acquisition:

> In summary, each surveyed section in the State is subject to a section line right-of-way for construction of highways if:
>
> 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.

Case law from other states is in accord.

The effect of the survey requirement is discussed in the U.S. Government Memorandum of April 24, 1973, which plaintiffs have attached to their opposition. "The dedication is automatically in effect when public lands go to patent, but the dedication cannot be utilized until the rectangular survey is extended to the lands in point."

Only the federal offer and the State's acceptance were necessary for section line easements to attach to all public lands. Therefore, only if property first became

unreserved public land after 1949, and passed to private ownership so as to no longer be unreserved public land by 1951, would it be unencumbered by the easement.

Plaintiffs next point to the 1976 repeal of the federal offer as potentially extinguishing all unused easements. They cite no supporting law, probably because this is a nonsensical argument. The legislation is consistently characterized as an offer and acceptance which automatically create an easement. Withdrawal of the offer simply makes future acceptance, i.e. the creation of a right-of-way on property which first became unreserved public land after 1976, inoperative. Plaintiffs' reference to an unused right in perpetuity as being so abhorent is mistaken. (An easement is a present possessory interest whether or not it is being used, and the rule against unused rights existing in perpetuity applies only to future interests.) Likewise the easement cannot, as plaintiffs suggest, be extinguished by subdividing along different lines. It is simply not that fragile a right.

Plaintiffs' final unsubstantiated argument suggests that because the federal offer refers to public land and the property involved here is no longer such, the easement is gone. The basic purpose of the grant was to reserve a public right-of-way after land moves into private ownership. Additionally, as defendant points out, specific language from the plat of plaintiffs' land creates an easement regardless of its status under the legislation discussed above. The plat contains the following language:

OWNERSHIP CERTIFICATE

I, the undersigned, hereby certify that I am the Director, Alaska Division of Lands, and that the State of Alaska is the owner of the West 1/2, Sec. 20 and the South 1/2, Sec. 17, Township 1 North, Range 1 West of the Fairbanks Meridian. I hereby request approval of this plat showing such easements for public utilities and roadways dedicated by the State of Alaska for public use.

/s/ Roscoe E. Bell
Director

Accordingly, the State, as owner of the property, can grant an easement thereon

second basis suggested is that, pursuant to AS 40.15.030, public areas are deemed to have been dedicated when a plat on which they appear is approved and recorded. Chugach Electric Association v. Calais Company, 410 P.2d 509 (Alaska 1966). The plat in question shows the section line easement in controversy here

legal issue remains. Authority from other states is divided as to whether or not a highway easement can be used for public utility purposes. (See 58 ALR Annot. 2d p.525) Some allow it, some allow it on city street easements but not on rural highways, and some disallow it. Defendants note that the Alaska courts have not addressed the question and they argue that policy and practical considerations make it reasonable to adopt the position that such a use is permitted. If the opposite is held, existing utility lines on easements will be subject to challenge and relocation, and utility companies will not be able to choose the most practical and economical route for new utility lines. Defendant submits the affidavit of Charles L. Parr, their real property officer, in support of

these considerations. It is defendant's position that the dedication of an easement for highway purposes automatically includes utility purposes, not as a contingent but as a subordinate, independent use.

This position is controverted by an Attorney General's Opinion dated February 22, 1978. That reads in part:

> My initial reaction . . . is that the use of dedicated section line rights-of-way for purposes other than "public highways" is outside the scope of the grant and dedication, and is therefore inappropriate.

Although the binding effect of this is minimal, Attorney General Opinions seem to be Alaska's primary authority in interpreting section line easements.

Given the fact that case law exactly on point appears to be nonexistent, the Court has two choices. It can simply follow the logic shown by the opinion of the Attorney General and find that the term "public highways" must exclude public utility usage or consider the public policy arguments presented. This Court elects to adopt the latter course.

The public policy arguments presented by the defendants convince the Court that section line easements should be allowed to be used for public utility lines if the grant of the original easement can be logically so interpreted.

The Court concedes that at first blush, the term "public highway" does not seem to encompass utility lines However, such an interpretation has been made in other cases:

> The fact that highways are dedicated to public use implies that they must be maintained primarily as public ways . . .. Rev. Vol. 4, McQuillan, Municipal Corporations, 2d Ed. 134, § 1437.

> Subject to this primary use, highways may be put to any of the numerous incidental uses suitable to public thoroughfares, and with those uses the owner of the abutting land has no right to interfere. The public easement includes every reasonable means for the transmission of intelligence, the conveyance of persons, and the transportation of commodities which the advance of civilization may render suitable for a highway. State v. Board of Commissioners of Walla Walla County, 184 P.2d 577 (Wash. 1947).

Similar language exists in cases from other states: United Electric Light Co. v. Deliso Construction Co., 315 Mass. 313, 52 N.E. 2d 553 (Mass. 1943); Alabama Power Co. v. Christian, 216 Ala. 160, 112 So. 763 (Ala. 1927); Mall v. C. & W. Rural Electric Co-op. Assn., 168 Kan. 518, 213 P.2d 993 (Kan. 1950).

Plaintiffs argue that these and all similar cases involve uses being added to already existing highways. This is true. Neither party has been able to produce a case where public utility use preceded construction of a highway. Similarly, defendants argue that there is no legal authority suggesting that the primary use for a highway must be exercised before the secondary use for utilities must be.

Presumably, at its most absurd, adopting plaintiffs' argument would force utility companies to build roads in conjunction with or previous to the construction of power lines. The Court finds that a more logical interpretation is that the dedication of an easement for highway purposes automatically includes utility purposes, not as a contingent but as a subordinate, independent use.[2]

---

2. Defendant concedes that its use of the property cannot interfere with later highway construction upon the easement and that it is subordinate in that respect.

Defendants' motions for summary judgment are GRANTED, and the injunction previously entered is dissolved.

DATED at Fairbanks, Alaska, this 29th day of August, 1980

James R. Blair

JAMES R. BLAIR
Superior Court Judge

TO (See Below)

DATE: June 18, 1980

FILE NO: 242-3403

TELEPHONE NO. (907) 364-2121 Ext. 231

SUBJECT: Section Line Dedications
Utility Permit Policy

FROM: Harry Keller
Deputy Director H.Q. Operations
Highway Design & Construction
DOT/PF

The attached proposed policy for control of utility installations within section line dedications made for use as public highways is provided for your review and comment.

Applicable laws, regulations, legal opinions and suggestions from those with experience in this area were taken into consideration when formulating this policy. Comments by the Regional Utilities Engineers on a preliminary draft of the policy provided for their review are reflected in the attached proposed policy.

Please have this proposed policy reviewed by appropriate persons and provide your comments to Headquarters Operations no later than July 7, 1980.

RECEIVED

comments?

HK/REO/gm

Attachment

RIGHT OF WAY
ANCHORAGE

Addressees:

R.D. Redick, Central Regional Hgihway Engineering Chief
Andy Zahare, Acting Interior Regional Engineer
Wallace K. Williams, Southeastern Regional Engineer
Heinrich Springer, Acting Director Western Regional Engineer
Herbert Lehfeldt, Southcentral Regional Director
Jack T. Bodine, Chief, Right-of-Way, Land Acquisition & Leasing

Route A	
Chief	
Asst. Chief	
C & SC Area	
I & W Area	
SP & SC Area	
Appraisal	
R/W Area	
Fac. Site Acq.	
File	

G	I	SE	SC	W	OTH

COPY	Central Region RIGHT OF WAY "Hwys"-"Aviation"	DATE RCVD: JUN 26 1980
	RICHARDS, TED	
	CRATTON, DAN	
	DAVIS, SHIRL	
	APPRAISALS	
	NEGOTIATIONS	
	ENGR/PLANS	
	RELOCATION	
	PREAUDIT	
	RECORDS: "Hwys"	
	RECORDS: "Aviation"	
	OTHER:	

Remarks: Please review for comment.

RECEIVED
JUN 19 1980
RIGHT OF WAY

PROPOSED

SECTION LINE DEDICATIONS
UTILITY PERMIT POLICY

1. Highway Design and Construction shall exercise control over the installation of utilities within highway rights-of-way, including section line dedications made for use as public highways.

2. Prior to issuing a permit for installation of utilities within section line dedications, the Regional Right of Way section shall be requested to concur with the proof of existance of a section line dedication. The permit applicant shall be responsible for furnishing proof of existance of the section line dedication.

3. Appropriate investigation shall be made to determine if the terrain in the section line dedications is suitable for future highway construction.

4. Appropriate contacts shall be made with other sections or divisions in an effort to coordinate utility installations with future highway projects to the extent practical.

5. Because of the interest of the Alaska Division of Lands (ADL), they shall be provided with a copy of the executed permit. This copy of the executed permit shall be sent to your local ADL office.

6. If a permit application is determined by the Department to be in conflict with existing or future highway alignments and the permit is denied, the local ADL office shall be notified of the denial in writing.

7. Portions of section line dedications may not be suitable for highway purposes due to terrain conditions or may be in conflict with proposed land development consistent with good planning, including suitable provisions for traffic. In situations where it is determined by the Department, after adequate review, investigation and contact with appropriate sections and divisions within the Department, that a particular portion of a section line dedication should not be retained for highway purposes, it may be transferred to the Department of Natural Resources.

Authority & Responsibility

Under the Alaska Statutes, the Department of Transportation and Public Facilities has the authority and responsibility to control utility installations within section line dedications made for use as public highways. The procedures, rules and

regulations in the Alaska Administrative Code (AAC), adopted in accordance with the Alaska Statutes, provide the Department with the means of controlling utility installations within these section line dedications.

Alaska Statutes Title 19, Section 19.25.010. Use of rights-of-way for utilities. states,

> "A utility facility may be constructed, placed, or maintained across, along, over, under or within a state right-of-way only in accordance with regulations prescribed by the department and if authorized by written permit issued by the department."

Regulations and permit procedures for the control of utility installations within highway rights-of-way are provided in AAC Title 17. Highways. Chapter 15. Engineering-Utility Permits.

In instances where a utility requests permission to locate their facilities within a section line dedication made for use as public highways prior to construction of the highway, the permit issued by the Department shall require the utility to be located to minimize possible conflicts with future highway construction. While the provisions of the AAC pertaining to location of utilities within the highway rights-of-way generally relate to existing highways, the expressed intent is to locate utilities to minimize possible conflicts with future highway construction. Consideration will be given to addressing the installation of utilities in section line dedications specifically in the pending revisions to the AAC.

References pertaining to section line dedications and opinions on jurisdiction include the following:

Alaska Statute Title 19. Section 19.10.010. Dedication of land for public highways. states,

> "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."

Act of U.S. Congress July 26, 1866

Session Laws of Alaska
Chapter 19 SLA 1923, Section 1
Chapter 123 SLA 1951, Section 1
Chapter 35 SLA 1953, Section 1

1969 Opinions of the Alaska Attorney Ceneral No. 7

Department of Transportaion and Public Facilities authority for jurisdiction over section line dedications nade for use as public highways includes:

Alaska Statutes Title 19. Highways and Ferries.

Alaska Statutes Title 44. State Covernment.
Chapter 42 Department of Transportation & Public Facilities
Chapter 62 Administrative Procedure Act.

Alaska Statutes Title 19. Section 19.05.070. Vacating lands or rights in land. states,

"The department may vacate land, or part of it, or rights in land acquired for highway purposes, by executing and filling a deed in the appropriate recording district. Upon vacating, title reverts to the persons, heirs, successors, or assigns in whom it was vested at the time of the taking. The department may transfer land considered no longer necessary for highway purposes to the Department of Natural Resources for disposal. The proceeds of disposal by the Department of Natural Resources shall be credited to the funds from which the purchase was made originally. (4 art IV title IV ch 152 SLA 1957)"

Issued by:

_____
Charles S. Matlock

_____
Title

_____
Date

Anchorage Daily News Friday, May 9, 1980 a-12

State loses land case

YLC

By JULIE ANNE GOLD
Daily News reporter

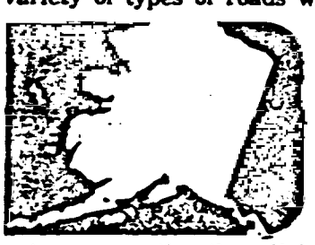
The state is not allowed to take away private land reserved for public highways without compensating landowners who occupied the land before 1966, a Superior Court judge ruled Thursday.

The ruling marks the end of a long-running battle between private landowners and the state Department of Transportation.

After a week of deliberation, Superior Court Judge Victor Carlson said he went back to the state's 1966 Right-of-Way Act when deciding to rule against the state.

The purpose of the act was to prevent the state of Alaska from taking private land for roads, tramways, and bridges "without payment of just compensation by the law and in the manner provided by the law."

In the suit, private landowners and Alaska land title companies which insured them claimed the state had no right to expand highways along a variety of types of roads without compensating the adjoining landowners for lost land.



Assistant attorney general Jack McGee said federal and state public land orders — on record before the 1966 act — showed the land in question kas not privately owned but in fact belonged to the state.

"There is no evidence to of fact or law to support the state's contention," Judge Carlson wrote, and used the case of Anchorage lawyer Theodore Pease — a complainant in the case — to prove his point.

In 1960, Pease and his wife bought a 2½-acre lot along Rabbit Creek Road. A federal property patent to the land, dating back to 1955, Pease said, provided a "right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located along the south and east boundaries" of the road.

In 1978, Pease said the state widened the road from 66 to 100 feet in width without compensating him for the loss of a 17-foot strip of land.

Pease sued the state and his title insurance company, Transamerica, for the loss of his land.

In turn, Alaska Land Title Insurance Associaton, which represents all land title companies in Alaska, said they were not responsible for their clients' loss and sued the state.

Michael Price, who represents the association, said Alaska title companies faced losing millions of dollars if they had to pay every private landowner for land lost to the state.

According to McGee, title insurance companies were responsible for landowners' economic loss because they should have been aware public land orders claimed 150, 100, and 50 easements along the state's "through," "feeder," and "local" roads respectively.

Price argued these orders were "outside the chain of title" and did not affect private landowners' patents.

Apparently, Judge Carlson agreed.

"There is no evidence," he wrote, to the state's assertion that withdrawls and easements established by various public land orders... are dedications of property to the public which cannot be transferred to private ownership."

Land ownership along roads in dispute

By JULIE ANNE GOLD
Daily News reporter

Who owns the land along Alaska's roads?

That landmark question may be answered in Anchorage Superior Court this week by Judge Victor Carlson.

Both sides' lawyers in Alaska Land Title Association's suit against the state of Alaska and the municipality of Anchorage asked Carlson Wednesday to decide the thorny land case without the suit going to trial.

At issue is the city's and state's right to expand roads under federal easement or "right of way" regulations established before and after statehood in 1959.

According to assistant attorney general Jack McGee, the state, under 1949, 1951, and 1958 federal land orders can legally claim 150, 100, and 50-foot easements on both sides of through, feeder, and local roads respectively, without compensating land owners for strips of acreage they may have considered theirs.

Alaska private landowners — and more than 14 land title companies which insure Alaska property — disagree.

Federal "patents" or deeds issued to Alaskan landowners, their lawyers say, give the city and state only a 33-foot easement on each side of the public roads which front their property.

Michael Price, lawyer for the title companies, said these land patents issued by the U.S. government prohibit the city or state from expanding the roads to a greater width than 33 feet without compensating the owners for the appraised value of the land.

For the city to take the land without paying, he said, is a violation of due process and just compensation under the law.

However, McGee contends the state does not have to pay these landowners because the land belongs to the public.

This right-of-way problem is apparently unique to Alaska.

Ten years before statehood the federal government issued Public Land Order 601, withdrawing certain parcels of land adjacent to through, feeder, and local roads from settlement for public use.

This order was issued before landowners' property patents, McGee said, and sets aside land adjacent to public roads for public use.

Price contends land orders issued after 601 invalidate the withdrawls and therefore make landowners' patents the only true land claims.

Homesteaders have built on the "withdrawn" lands, leaving the federal government with a problem on its hands.

Since the government could not kick the landowners off the land, Price said, it issued new orders creating federal "easements" for future road expansion.

These new land orders, Price told Judge Carlson, are outside the "chain of title" and should not affect landowners' patents.

McGee, however, said the orders prove "constructive notice" of the new easements and are binding.

For nearly two hours Wednesday morning both lawyers wove complicated legal arguments on the land case before Judge Carlson.

At one point Carlson interrupted McGee and said it would be hard for a layman or landowner to find out just what Alaska roads the state was claiming the right to expand.

The judge asked McGee how private landowners would know if local road easements differed from what was stated on their deeds if the state could not even find a list of what the local roads were.

"Can a human being do it (find out where the roads are)?" Carlson asked McGee.

McGee answered that he wasn't able to come up with a listing of local roads recorded before 1949, but he was sure they could be found in the Federal Register.

To expect an individual landowner or title company to plow through the "thousands of orders published in the Federal Register each time an insurance policy is filed," Price said, "would represent an insurmountable burden."

As an example, Price cites Anchorage lawyer Ted Pease, who in the 1950s bought a 2½-acre lot fronting Rabbit Creek Road, and says he knew of no federal land orders conflicting with his property patent.

It was not until the late seventies, Pease said — when the city decided to upgrade and expand Rabit Creek Road — that he heard of a 50-foot local road easement.

Pease said his patent clearly states a 33-foot easement.

"I said 'hey you guys must be mistaken,' " Pease said he told highway officials.

"I told them they could condemn the land but they had to pay for it," he said.

Pease said he has yet to be compensated for the 17-foot strip of land.

Pease is also suing one of the title companies, Transamerica Title Insurance Co., for the loss of his land.

Pease said in a 1976 ruling the Alaska Supreme Court ruled a title company had to reimburse a private landowner for real property he lost under state-claimed easements.

Because of this, Pease said, Transamerica should reimburse him for his lost land.

But landowners without title insurance, like pioneer Anchorage resident Hans Hansan, Pease said, stand to lose everything.

In 1945 Hansan homesteaded a piece of land along Old Seward Highway.

Hansan said the highway was not even built when he settled the land, and land patents did not even exist.

Later when he received a land patent, Hansan said, it claimed a 33-foot easement.

McGee said Hansan's patent is invalid. Sine Old Seward Highway is a through road, he said, the state has a right to a 150-foot easement on Hansan's land.

Title insurance companies, Price said, stand to face catastrophic financial losses if they are forced to compensate clients for lost easement land.

This would "seriously endanger the viability of the title insurance business in the state," he said.

Judge Carlson said he expects the case to be appealed to the Alaskan Supreme Court, regardless of his decision.

Statehood panel passes by 1 vote

By JEAN KIZER,
The Associated Press

JUNEAU — With one vote to spare, the House agreed on Thursday to create an Alaska Statehood Commission to consider alternative relationships with the federal union.

The 22-16 reconsideration vote came after lawmakers killed a much-debated section would review progress in implementing the Statehood Act, changes in relationships among other nations and their territories as well as the U.S.-Commonwealth of Puerto Rico relationship.

The commission would recommend possible changes in Alaska's relationship with the federal union.

tenant governor, and four members elected from each judicial district during a statewide election.

The Finance Committee estimated the cost of the commission at nearly $1 million for the next three years.

The bill now goes to the Senate.

Draft

051
054
055

(See Below)

February 4, 1980

242-3403

Charles S. Matlock
Director, Highway Design & Construction

Section Line Dedications
Utility Permit Policy

Following is the policy for control of utility installations within section line dedications made for use as public highways.

1. Highway Design and Construction shall exercise control over the installation of utilities within highway rights-of-way, including section line dedications made for use as public highways.

Under the Alaska Statutes, the Department of Transportation and Public Facilities has the authority and responsibility to control utility installations within section line dedications made for use as public highways. The procedures, rules and regulations in the Alaska Administrative Code (AAC), adopted in accordance with the Alaska Statues, provide the Department with the means of controlling utility installations within these section line dedications.

In instances where a utility requests permission to locate their facilities within a section line dedication made for use as public highways prior to construction of the highway, the permit issued by the Department shall require the utility to be located to minimize possible conflicts with future highway construction. While the provisions of the AAC pertaining to location of utilities within the right-of-way generally relate to existing highways, the expressed intent is to locate utilities to minimize possible conflicts with future highway construction. Consideration will be given to addressing the installation of utilities in section line dedications specifically in the pending revisions to the AAC.

2. Prior to issuing a utility permit for section line dedications the Regional Right of Way section shall be requested to verify the existence of the section line dedication along the section line in question.

3. Appropriate investigation shall be made to determine if the terrain in the section line dedications is suitable for future highway construction.

4. Appropriate contacts shall be made with other sections or divisions in an effort to coordinate utility installations with future highway projects to the extent practical.

5. Because of the interest of the Alaska Division of Lands, they shall be kept advised of pending permits for installation of utilities within section line dedications and they shall be provided with a copy of the executed permit.

6. Portions of section line dedications may not be suitable for highway purposes due to terrain conditions or may be in conflict with proposed land development consistant with good planning including suitable provisions for traffic. In situations where it is determined by the Department, after adequate review and investigation, that a particular portion of a section line dedication should not be retained for highway purposes, it shall be transferred to the Department of Natural Resources for disposal. (?) (Easement by Reservation)

Request for vacation (?)

Alaska Statues Title 19. Section 19.05.070. Vacating lands or rights in land. states,

> "The department may vacate land, or part of it, or rights in land acquired for highway purposes, by executing and filing a deed in the appropriate recording district. Upon vacating, title reverts to the persons, heirs, successors, or assigns in whom it was vested at the time of the taking. The department may transfer land considered no longer necessary for highway purposes to the Department of Natural Resources for disposal. The proceeds of disposal by the Department of Natural Resources shall be credited to the funds from which the purchase was made originally. (4 art IV title IV ch 152 SLA 1957)"

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> "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."

Act of U.S. Congress July 26, 1866.

Session Laws of Alaska
Chapter 19 SLA 1923, Section 1.
Chapter 123 SLA 1951, Section 1
Chapter 35 SLA 1953, Section 1.

1969 Opinions of the Alaska Attorney General No. 7.

Department of Transportation and Public Facilities authority for jurisdiction over section line dedications made for use as public highways includes:

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Alaska Statues Title 44. State Government.
Chapter 42 Department of Transportation & Public Facilities.
Chapter 62 Administrative Procedure Act.

Alaska Statues Title 19. Section 19.25.010. Use of rights-of-way for utilities states,

> "A utility facility may be constructed, placed, or maintained across, along, over, under or within a state right-of-way only in accordance with regulations prescribed by the department and if authorized by written permit issued by the department."

Regulations and permit procedures for the control of utility installations within highway rights-of-way are provided in AAC Title 17. Highways. Chapter 15. Engineering-Utility Permits.

CSM/REO/gm

Addressees:

R.D. Redick, Central Regional Highway Engineering Chief
Andy Zahare, Acting Interior Regional Engineer
Wallace K. Williams, Southeastern Regional Engineer
Heinrich Springer, Acting Director Western Regional Engineer
Herbert Lehfeldt, Southcentral Regional Director