

**FRANK H. MURKOWSKI,
GOVERNOR**

2301 PEGER ROAD
FAIRBANKS, ALASKA 99709-5399
TELEPHONE: (907) 451-5423
TDD: (907) 451-2363
FAX: (907) 451-5411
1-800-475-2464

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

NORTHERN REGION PRECONSTRUCTION, Right of Way Section

April 24, 2006

Re: Section Line Easement
Section 29/20, T.1N., R.2E., F.M.

Mr. John Burns
Borgeson & Burns, PC
100 Cushman St. # 311
Fairbanks, AK 99701

Dear Mr. Burns:

Questions and comments I heard in my discussions with you and Valerie Therrien in the last week suggest that I add to or clarify certain issues relating to my November 1, 2004 letter to Mr. Dwane Sykes. In my letter to Mr. Sykes, I offered an opinion as to the status of a section line easement between Sections 29 and 20 of Township 1 North, Range 2 East, Fairbanks Meridian.

It was suggested that a court judgment was necessary to validate the existence of a section line easement and that this validation was required before the easement could be used. The section line easement between Sections 29 and 20 is a 66-foot wide easement based on the federal R.S. 2477 statute. R.S. 2477 was a self-executing congressional offer of a right-of-way that could be accepted by construction, by public user or some positive act of appropriate public authorities. In the case of federal section line easements, the positive act by public authorities was the 1923 acceptance of the grant by the Territorial Legislature. Neither R.S. 2477 nor any case law that I am familiar with requires a public authority to obtain a judgment to perfect an R.S. 2477 right-of-way. Once it can be shown that the R.S. 2477 offer is in place, the acceptance of the grant by the Territory is in effect, the federal survey that established the section line has been approved, and no prior existing rights would prevent the application of the easement – the easement then exists and is available for use.

Once the requirements to establish a section line easement exist, the easement can only be vacated by a competent authority. A valid section line easement may be inadvertently left off a plat or map and may not be called out as an encumbrance in a conveyance document. However, until the easement is vacated, it will continue to exist and be available for use by the general public. Currently, the vacation of a section line easement in the North Star Borough would require public notice, approval by the Platting Board, and approval by the Commissioners of the Department of Natural Resources and Transportation.

In general, a section line easement is available for use by groups or individuals requiring access or the easement could be incorporated into the road systems managed by a

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government entity. Although it varies throughout the state, in the North Star Borough it is not necessary for an individual to obtain permission to use a section line easement that crosses private lands unless that easement is a part of the DOT&PF highway system or within the City of Fairbanks boundaries.

If you have any further questions regarding this correspondence, please feel free to contact me at (907) 451-5423 or by email at johnf_bennett@dot.state.ak.us.

Sincerely,

John F. Bennett, PLS, SR/WA
Chief, Right of Way