

## John Bennett

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**From:** John Bennett  
**Sent:** Monday, December 6, 2021 2:11 PM  
**To:** ryan.anderson@alaska.gov  
**Subject:** Section Line Easement Agreement

Ryan – First, congratulations on your appointment as Commissioner! I’m sure one attribute that a person in your position can always use is a good sense of humor. I would offer to share some of mine except that my sense of humor got me in trouble more often than not... Today I am contacting you as Commissioner and as a result of a ROW issue that seems to have taken a very wrong turn.

A year ago on 12/30/20, representatives of DNR, Mental Health Trust (MHT) and DOT (MacKinnon) signed an agreement titled “Concurrence on Applicability of Section Line Easements on Alaska Mental Health Land”. This agreement (attached) outlines how section line easements (SLE) would be applied to MHT lands. Generally, DOT&PF ROW Engineering and DNR Cadastral Survey are the points of contact for both private and public land professionals with regard to questions regarding the research and applicability of SLEs. I have been told that DNR Cadastral was not involved in the development or review of this agreement and I have not found anyone within DOT ROW Engineering who was consulted. Most of the AAGs that I worked with during my career have moved on but I contacted Sean Lynch in the Juneau AGO as I have worked with him on many ROW issues and he was not familiar with the agreement.

I have spoken with both Gwen Gervelis, the DNR Chief of Cadastral Survey and Tim Sprout on this issue and they both agreed that contacting you directly might be the best way to shed some light on this issue and have it corrected. Gwen told me that she had contacted the AGO about it but due to other priorities, they did not know when they would be able to address her concerns.

I’m not sure how familiar you are with the concept of SLEs but there are two types, federal SLEs based on RS-2477 and State SLEs based on Alaska Statute. RS-2477 is based on the 1866 mining law and applies to both historic trails and SLEs. With regard to SLEs the RS-2477 law is considered to be the “offer” or the first part of a dedication of public ROW and the second part, or “acceptance” completes the dedication. The acceptance of the dedication for a trail is by actual use. The acceptance of the SLE is by government action. In 1923, the Territorial Legislature accepted the RS-2477 “offer” for an easement along all section lines within the Territory at a width of 4 rods or 66-feet, 33-feet on each side of the section line.

Then fast forward to the early 1960’s when the Fairbanks Farmer’s Loop road was being realigned and widened by the Dept. of Highways. During the condemnation of a parcel, the existing Farmer’s Loop ROW was deducted from the area that the owner was to be compensated for. This was claimed as an existing public ROW based on the RS-2477 trail. The Dept. asserted a 66-foot width, presumably based upon the federal section line easement width. The superior court ruled that the state was without authority to assert the 66-foot width and would only allow the width as used or “ditch to ditch”. To avoid this problem on future projects, in 1963 the state passed [AS 19.10.015 Establishment of Highway Widths](#). This statute established a width of 100-feet for “all officially proposed and existing highways on public land not reserved for public uses” and is the basis for asserting a width of 100-feet for the ROW width on RS-2477 trails.

In the statutes, AS 19.10.015 comes immediately after [AS 19.10.010 Dedication of land for public highways](#). AS 19.10.010 deals with SLEs, both state SLE’s and federal SLEs. It fixes the width of State SLEs at 100-feet or 50-feet on each side of the section line between each section of land owned by the state, or acquired from the state. It then goes on to assert “a tract four rods wide” between all other sections in the state. This is essentially a reaffirmation of the 66-foot wide SLE accepted by the Territorial Legislature in 1923. I have attached the two statutes with some of my own notes.

The third document I have attached is titled “1963 Highway Legislation – highlight.pdf”. This is a memo from the Legislative Council on November 6, 1963 discussing the pending AS 19.10.010 and AS 19.10.015 legislation. It appears that AS 19.10.010 as initially proposed would have widened the federal SLEs by accepting 100-feet instead of the 4 rod or 66-foot width. However, that initial version was not passed and the federal SLE acceptance remained at 66-feet. The second paragraph on page 2 of the Legislative Council memo states that “The purpose of SB #166 [AS 19.10.010] is to establish 100-foot rights-of-way along state and federal section lines, while the effect of SB #165 [AS 19.10.015] is to establish the uniform right-of-way width for highways established anywhere on state or federal public lands, **except on section lines.**” This makes it clear that AS 19.10.015 was never intended to apply to SLE’s.

At long last, this gets us to the primary problem with the MHT/DOT/DNR SLE agreement. Paragraph 1 – “A statutory section line easement exists on trust land that was unreserved, surveyed federal land prior to the time of its selection under the Alaska Mental Health Enabling Act of 1956 (AMHEA). Such a section line easement is referred to herein as a ‘federal’ section line easement. If the land was selected under the AMHEA prior to April 7, 1963, the section line is 33’ on each side of the centerline of the surveyed section line. [FN2] If the land was selected under the AMHEA on or after April 7, 1963, the section line is 50’ on each side of the center line of the surveyed section line.” [FN2] “This is the date AS 19.10.015 was enacted, which provides that ‘all officially proposed and existing highways on public land not reserved for public uses are 100 feet wide.’ This modified the width of federal section line easements that were accepted under AS 19.10.010, where the land was still unreserved federal land.”

Therein lies the issue: the author of the MHT/DNR/DOT agreement has used AS 19.10.015 to fix the width of federal SLEs at 100-feet instead of the correct 66-feet according to AS 19.10.010. The Legislative Council memo states that the intent of AS 19.01.015 was not to apply to SLEs. The practice of both public and private land surveyors, title & ROW professionals for many decades has been to apply the 66-foot width to federal SLEs as AS 19.10.010 calls out. If this Agreement is not revised, it will be cause for confusion and aggravation to all who deal with SLEs as a part of their daily work. If it is not revised, it will bring into question mapping and property rights for every federal SLE determined since 1963. At this time I understand that DNR Cadastral is not issuing SLE advice based on the MHT/DNR/DOT Agreement and has stamped in large red text “Document In Error” across the Agreement.

There may be other issues that a more in depth review would discover. I recognize that MHT represents the interests of a subset of Alaskans and so may have tailored the Agreement to conservatively interpret the rights of the general public. The last line of the Agreement distinguishes between private and state owned and operated utilities. I’m not sure what the intent was of this language but if a federal SLE validly exists, the rights of Utilities to occupy them as a subordinate use to highways is protected under the State case “Fisher v. Golden Valley Electric”.

So if I haven’t numbed your brain with this subject by this point, all I would request is that this Agreement be abandoned and a new agreement drafted with the review and input of additional knowledgeable staff such as DOT ROW Engineering, DNR Cadastral, DOT Utilities & AGO DOT Section. As previously stated, this Agreement affects far more than state agencies and employees, it affects all individual and business land owners whose property bounds on a section line. I recognize the need for MHT to protect its land interests, but this subject goes to protecting the interests of all of Alaska’s citizens.

Ryan, let me know if I haven’t provided sufficient detail and I can elaborate... Thanks in advance. JohnB

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