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**DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES**

*NORTHERN REGION PRECONSTRUCTION, Right of Way Section*

May 25, 2006

Re: Section Line Easement  
Section 5/8 & 8/9, T.2S., R.2E., F.M.

Mr. Ron Therriault  
2473 Old Richardson Highway  
North Pole, Alaska 99705

Dear Mr. Therriault:

You have requested that I provide an opinion as to the status of the section line easements between Sections 5 & 8 (East/West) and 8 & 9 (North/South) of Township 2 South, Range 2 East, Fairbanks Meridian. Specifically, you have requested an evaluation of the section line easement segments that cross Lots 2, 3 and 4 of U. S. Survey No. 9073 which comprise a portion of the Alaska Railroad right-of-way.

Please note that DOT&PF managed facilities do not cross the Alaska Railroad right-of-way at these points. DOT&PF has no jurisdiction over section line easements that have not been incorporated into the Alaska Highway System. My evaluation is based upon my experience in working with section line easements and should not be considered an official DOT&PF assertion. Any concerns you have about the legal issues related to section line easements or the risk you may incur should be addressed to your attorney or title agency.

For a federal section line easement to exist there are three requirements. First the section line must exist, that is, it must have been surveyed and platted. This is considered to have occurred when the official federal township plat that reflects the survey and monumentation of the section line in question has been approved. The federal plat that relates to the survey of the section line between Sections 5/8 and 8/9 was approved on June 4, 1921. Next, there cannot be a federal section line easement unless there has been an offer and acceptance of the right of way grant. The offer for federal section line easements was made under the Mining Law of 1866 and reenacted as Revised Statute 2477 (RS2477). The grant for a 66-foot wide easement between each section of land was initially accepted by the Alaska Territorial Legislature on April 6, 1923. There was a hiatus period between 1949 and 1953 when the grant acceptance was not in place and eventually the RS2477 grant offer was repealed in 1976. Finally, for the section line easement to attach, the federal lands crossed by the section line must be unreserved during some period when the offer and acceptance of the grant was in effect. This status can generally be obtained from the BLM records.

At the time of township approval (June 4, 1921), the RS2477 grant offer was in place however, the Territorial acceptance did not occur until 4/6/23. So the earliest a section line

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easement could have attached would have been on the date of acceptance in 1923. You provided me with the entry date of 5/20/46 for the Carl Finell homestead which includes the northwest quarter of Section 9. In order to file homestead applications that could eventually result in a patent, the lands must have been unreserved and open for entry. As the NW ¼ of Section 9 was unreserved during the period of offer and acceptance of the RS2477 grant, I would conclude that a 33' wide federal section line easement attached to the northerly and westerly boundaries of the Finell homestead. I have not researched the other homestead entries within Sections 4, 5 & 8 to determine the dates of unreserved status. However, as the section line easement was available from the date of grant acceptance in 1923, it is likely that you would find periods of time where the lands bounding the section lines were unreserved and therefore now subject to a section line easement.

Presuming that a vacation of the section line easement has not been approved since it's establishment, the full section line easement still exists.

I have also heard it stated that the Alaska Railroad Transfer Act (ARTA) served to supersede any prior existing rights granted by the federal government. However, I would be surprised to find that this would have any effect on the validity of section line easements as the establishment of these easements is a matter of state law as opposed to federal law.

Back in the early 1990's, it was necessary for DOT to go to the Superior Court to confirm a section line easement along Peger road across land that was once a part of the Alaska Railroad Reserve. The property owner argued that the easement did not exist because a road had never been constructed across it, that the repeal of 19 SLA 1923 (hiatus period) vacated previously accepted easements, or that ARTA resulted in the vacation of the section line easement. Citing Alaska case law regarding section line easements, the Court found all of these arguments to be without merit. I have attached a copy of that judgment for your reference.

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](mailto:johnf_bennett@dot.state.ak.us).

Sincerely,

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