Section Line Easements Over Federal Lands: Previously I suggested consulting with DNR regarding SLE status or use where land may be subject to a State SLE. The same advice regarding federal agencies and land still under federal ownership would not be as beneficial. Whether the RS-2477 right-of-way is for a trail or SLE, the federal interpretation would be the same. The RS-2477 grant called for "*...construction of highways...*".[139] In the federal view, legislative acceptance without construction or use would be insufficient to complete the dedication. So for a practical purpose, there are no SLEs on federally owned lands available for use.

The State outlined its position in the aforementioned 1969 AGO Opinion. The opinion cites the 1961 Alaska Supreme Court case Hamerly v. Denton: *"...before a highway may be created there must be either some positive act on the part of the state, clearly manifesting an intention to accept a grant, or a public user...."* The positive act was the legislative acceptance. On lands conveyed out of federal ownership and now subject to state law, an SLE can attach where no road has been constructed.

The same would hold true for federal trust lands such as native allotments. While they remain in restricted trust status, they would be subject to the federal interpretation of an RS-2477

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138 Girves v. Kenai Peninsula Borough – Alaska 1975

139 On October 23, 1986, the United States filed an Amicus brief in the case Alaska Greenhouses, Inc. v. Municipality of Anchorage, (Case No. A85-630 Civil). The brief stated that the United States has a strong interest in the property interpretation of a federal statute (R.S. 2477). "*To the extent the Alaska statute purports to accept rights-of-way without any actual or even planned construction, the purported acceptance exceeds the scope of the offer and is invalid.*"

that no SLE could be created by mere legislative acceptance of the grant. But what if the trust restrictions were released and the allotment sold to another private party? The parcel would become just another tract of land subject to state law and the SLE interpretations set out by our State Supreme Court. In a recent conversation with another surveyor, we considered an allotment that was bounded on the east and south by section lines and where use and occupancy was claimed in 1955. The approved survey of the section lines did not occur until 1960 and the official application for a native allotment was not filed until 1972. The restrictions on the allotment were released in 2006 when it was sold to a non-native. If the use and occupancy date did not precede the date of survey, we might find that once the trust restrictions were released and the SLE analysis could be reviewed according to state law, an SLE would exist. But what date will vest the rights for the initial allotment? Would it be the claimed date of occupancy and use or the date of application?[140] The current federal interpretation is clearly the date of occupancy and use which would result in a finding of no SLE. With the property now subject to state law, we might find a different result.

[140] See discussion on Native Allotment in section VIII.c.i. Public Land Orders/Practical Applications/Land Status regarding date of occupation and use vs. date of application for Native Allotments.