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**DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES**

*NORTHERN REGION PRECONSTRUCTION, Right of Way Section*

March 30, 2007

Re: Section Line Easement  
Section 13/14, T.11N., R.3W., S.M.

Mr. Gary Pohl  
USKH  
544 Fourth Ave. #102  
Fairbanks, AK 99701

Dear Mr. Pohl:

You have requested that I provide an opinion as to the status of the section line easement between Sections 13 and 14 of Township 11 North, Range 3 West, Seward Meridian. Specifically, you have requested an evaluation of the northerly half of the section line which runs through the McDowell homestead patent (#1226959) and the Sword homestead patent (#1226316). Please note that the section line easement in question is not a part of the Alaska Highway System and therefore not within the jurisdiction of DOT&PF. 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 insurance 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 13 and 14 was approved on February 26, 1957. 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 re-enacted 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period between 1949 and 1953 when the grant acceptance was not in place and eventually the RS2477 grant offer was repealed in 1976. However, as the township survey in question was approved after the hiatus period, it has no effect on the section line easement evaluation. Finally, for the section line easement to attach, the federal lands crossed by the section line must be unreserved. This status can generally be obtained from the BLM records. You have provided me a copy of the homestead patents and federal serial pages noting the chronology of actions relating to the homestead claims. The BLM records for the Sword Homestead entry indicate that the application leading to patent was filed on March 8, 1954. The BLM records for the McDowell Homestead entry

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indicate that the application leading to patent was filed on April 2, 1954. These filing dates are considered to be the critical dates to establish the withdrawal of lands from the public domain.

At the time of township approval (February 26, 1957), the “post hiatus period” RS2477 grant offer and acceptance was in place (March 21, 1953 to approximately 1974). However, as homestead entries leading to patent had already been accepted, the lands were considered to be in reserved status prior to the time of township survey approval. Therefore, the requirements leading to the establishment of a federal 66-foot wide section line easement along the northerly half mile segment of the line between Sections 13 and 14 were not met as of the date of the township survey approval.

In summary, the line between sections 13 and 14 that lies within the McDowell and Sword homestead patents and which includes the easterly boundary of your property (NE ¼ NE ¼ NE ¼ SE ¼ Section 14) is not subject to a federal section line easement.

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