

## RS 2477 - Section Line Easements

The offer of a right of way for highways across unreserved, unappropriated Federal lands provided in the aforementioned Mining Law of 1866 is also the basis for Section line rights of way. The position of Federal agencies suggests that section line easements cannot exist on Federal lands as the construction requirement of the RS 2477 grant was not fulfilled. The State position on section line easements is outlined in the 1969 Opinions of the Attorney General No. 7 dated December 18, 1969 entitled Section Line Dedications for Construction of Highways.

The acceptance of the offer became effective on April 6, 1923, when the Territorial legislature passed Chapter 19 SLA 1923 which provided that "A tract of 4 rods wide between each section of land in the Territory of Alaska is hereby dedicated for use as public highways..."

The section line easement law remained in effect until January 18, 1949. On this date the legislature accepted the compilation of Alaska law which also repealed all laws not included. By failing to include the 1923 acceptance, the section line easement law was therefore repealed.

On March 26, 1951, the legislature enacted Ch. 123 SLA 1951 which stated that "A tract 100 feet wide between each section of land owned by the Territory of Alaska or acquired from the Territory, is hereby dedicated for use as public highways..." The 1953 law was amended on March 21, 1953 by Ch. 35 SLA 1953, to include "a tract 4 rods wide between all other sections in the Territory..." (See Alaska Statute AS 19.10.010 Dedication of land for public highways.)

For a section line easement to become effective, the section line must be surveyed under the normal rectangular system. On large areas such as State or Native selections, only the exterior boundaries are surveyed, therefore no section line easements could attach to interior section lines unless further subdivisional surveys were carried out. The 1969 Opinion of the Attorney General regarding section line easements states that an easement can attach to a protracted survey, if the survey has been approved and the effective date has been published in the Federal Register. The location of the easement is however subject to subsequent conformation with the official public land survey and therefore cannot be used until such a survey is completed.

Land surveyed by special survey or mineral survey are not affected by section line easements since such surveys are not a part of the rectangular net. However, the location of a special or mineral survey which conflicts with a previously established section line easement cannot serve to vacate the easement.

Acceptance of the RS 2477 offer can only operate upon "public lands, not reserved for public uses". Therefore, if prior to the date of acceptance there has been a withdrawal or reservation by the Federal government, or a valid homestead or mineral entry, then the particular tract is not subject to the section line dedication. The offer of the RS 2477 grant was still available until its repeal by Title VII of the Federal Land Policy and Management Act (90 Stat. 2793) on October 21, 1976. However, prior to the repeal, the application of new section line easements was effectively eliminated by a series of public land orders withdrawing Federal lands in Alaska. Public Land Order 4582 of January 17, 1969 withdrew all public lands in Alaska not already reserved from all forms of appropriation and disposition under the public land laws. PLO 4582 was continued in force until passage of the Alaska Native Claims Settlement Act on December 18, 1971. While repealing PLO 4582, ANCSA also withdrew vast amounts of land for native selections, parks, forests and refuges. A series of PLO's withdrew additional acreage between 1971 and 1972. PLO 5418 dated March 25, 1974 withdrew all remaining unreserved Federal lands in Alaska. Therefore it is noted that as of March 25, 1974, there could be no new section line easements applied to surveyed Federal lands.

The Alaska Supreme Court has decided that a utility may construct a powerline on an unused section line easement reserved for highway purposes under AS 19.10.010 Use of rights-of-way for utilities. Alaska Administrative Code 17 AAC 15.031 Application for Utility Permit on Section Line Rights-of-way provides for permitting by the Department of Transportation.

The process for vacating a section line easement is provided in the DNR Administrative Code 11 AAC 53. A section line vacation requires approval from the Departments of Transportation and Natural Resources and the approval of a platting authority, if one exists in the area of the proposed vacation.

### **Research Technique**

1. Review the Federal Status Plat and note the patent number or serial number of any action which affects the section line in question.
2. Using either BLM's land status database or Historical Index determine the date of reserved status or the date of entry leading to patent.
3. From BLM's township survey plats extract the date of plat approval.
4. Review the dates and track the status of the lands involved to determine if they were unreserved public lands at any time subsequent to survey approval and prior to entry or appropriation. Particular attention should be directed towards any applicable Public Land Orders. In order for section line easements to have been created, the lands must have been unreserved public lands at

some time between April 6, 1923 and January 17, 1949, or between March 21, 1953 (March 26, 1951 in the case of lands transferred to the State or Territory) and March 24, 1974.

5. Using the date of entry or reservation and the date of survey plat approval, prepare an analysis of the data as follows:

- a. If date of entry predated survey plat approval there is no easement.
- b. If entry predates April 6, 1923 (date of enabling legislation for section line easements) there is no section line easement.
- c. If survey plat approval predates April 6, 1923 but date of entry is after April 6, 1923 there is a 66 foot section line easement.
- d. If survey plat approval is during the period of January 18, 1949 and March 20, 1953 and date of entry also falls within this period, there is no section line easement.
- e. If survey plat approval is during the period of January 18, 1949 and March 20, 1953 and date of entry falls after March 21, 1953, there is a 66 foot section line easement.
- f. If survey plat approval was prior to January 18, 1949 and the date of entry was during the period of January 18, 1949 and March 20, 1953, there is a 66 foot section line easement.
- g. If the land is in State ownership or was disposed of by the State or Territory after March 26, 1951, there is a 100 foot section line easement. University Grant Lands may be an exception as the application of a section line easement may be in conflict with the federal trust obligation.
- h. If survey plat approval date and the date land was disposed of by the Territory both fall within the period of January 18, 1949 and March 25, 1951, there is no section line easement.
- i. If survey plat approval was prior to January 18, 1949 and the land was disposed of by the Territory during the period of January 18, 1949 and March 25, 1951, there is a 66 foot section line easement.
- j. United States Surveys and Mineral Surveys are not a part of the rectangular net of survey. If the rectangular net is later extended, it is established around these surveys. There are no section lines through a U.S. Survey or Mineral Survey, unless the section line easement predates the special survey.

There may be many other situations which will require evaluation and decision on a case by case basis. An attachment is included to demonstrate some of the above points. Any section line easement, once created by survey and acceptance by the State or Territory remains in existence, unless vacated by the proper authority.

## **RS 2477 SECTION LINE EASEMENTS**

The materials provided were authored by John F. Bennett, PLS, SR/WA, Right of Way Engineering Supervisor, Alaska Department of Public Transportation and Public Facilities, Northern Region and originally published in Mr. Bennett's paper, "Highway Rights of Way in Alaska" published through Chapter 49 of the International Right of Way Association in Access Law and Issues Affecting Public and Private Lands and subsequently by the Alaska Society of Professional Land in Surveyors Standards of Practice for Professional Land Surveyors with Relevant State Statutes and Administrative Codes, Fourth Edition.

## Section Line Easement Determinations

In order for easements to exist, the survey establishing the section lines must have been approved or filed prior to entry on Federal lands or disposal of State or Territorial lands. The Federal lands must have been unreserved at some time subsequent to survey and prior to entry.

Surveyed Federal lands that were unreserved at any time during the indicated time period.	Effective Dates	Surveyed lands that were under State or Territorial ownership at any time during the indicated time period. (University Grant lands may be an exception.)
none	April 5, 1923	none
<b>66'</b>	April 6, 1923 to January 17, 1949	<b>66'</b>
none	January 18, 1949 to March 25, 1951	none
	March 26, 1951 to March 20, 1953	<b>100'</b>
<b>66'</b>	March 21, 1953 to March 24, 1974	
none	March 25, 1974 to Present	

Note: This table assumes the same land status on both sides of the section line. A review of the land status can result in total easement widths of 0', 33', 50', 66', 83', and 100'. A section line easement, once created by survey and accepted by the State, will remain in existence unless vacated by proper authority.